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THE

Justice of the Peace,

AND

PARISH OFFICER;

WITH

THE PRACTICE OF

COUNTRY ATTORNIES

IN CRIMINAL CASES;

COMPRISING ALSO ALL THE NECESSARY

FORMS

OF

COMMITMENTS, CONVICTIONS, ORDERS,

&c.

IN THREE VOLUMES.

VOL. I.

Fourth Edition.

BY

JOHN FREDERICK ARCHBOLD, ESQ

BARRISTER-AT-LAW.

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ADVERTISEMENT

TO THE

FOURTH EDITION.

A NEW edition of the first two volumes of this work is again required. In preparing it for the press, I have taken great pains to make it correct. I have added all the statutes made, and all the cases decided, upon the different subjects of which these volumes treat, from the publication of the last edition, to the present time. The statute relating to Pauper Lunatics (9 G. 4, c. 40) being repealed, and another statute substituted for it, I have re-written that part of the title "*Lunatic*" in the second volume, relating to Lunatic Asylums and Pauper Lunatics, and have given all the necessary forms. I have also added new forms under other heads, where I have thought them necessary; I have carefully revised the forms already in these

volumes, and have made such alterations in them as have become necessary by alterations in the law or from recent decisions.

A fourth edition of the third volume, comprising the law relative to the relief, management and settlement of the poor, has been already published.

J. F. A.

4, King's Bench Walk,
Temple.

PREFACE

TO THE

FIRST EDITION.

THIS work has been written, with a view of simplifying the duties of Justices of the Peace,—of rendering those duties, which now appear complex and difficult, plain, simple, and easy of execution. Burn's Justice, hitherto for a long period the principal, almost the only work upon the subject, was originally a very useful book. But the Editors, who have succeeded Dr. Burn, seem to have lost sight of the original intention of the work, and to have laboured, by their many and various additions to it, to render it a book of reference, more for lawyers by profession, than for those for whose use it was originally compiled. They have thus rendered it a more learned work, perhaps, but an infinitely less useful one for its original purpose, certainly. In these observations, however, I would not be understood as wishing, in the slightest degree, to depreciate the labours of these learned Editors; far from it; some of them I know to be very learned men, whose other works have commanded the respect and admiration of the Profession. All I mean to say is, that they have been too ambitious in enlarging their work, not only in the matter, but in the plan and design of it, for the purpose of making it

a book of reference for Barristers; and that it is now almost impracticable for any gentleman, who is not a lawyer by profession, to consult it with any advantage. Justices require a work written solely for their use,—one that will state their several duties succinctly, but in plain and intelligible terms which cannot be misunderstood. This, together with correct forms of the several warrants, convictions, and orders, which they may require in the exercise of their duties as Justices, are all they want. And such I have laboured to make the present work. Whether I have succeeded or not, must of course be determined by my readers.

The plan I have adopted, is this:—With respect to offences punishable upon summary conviction, I have given the definition of each offence, exactly in the words of the statute upon the subject; then, the form of conviction upon it; and then such portions of the statute as related to the prosecution for the penalty, the mode of levying and distributing it, with such other parts as directly or indirectly related to the Justices' jurisdiction. In like manner, as to indictable offences, I have defined each common law offence in the language of the text books, and each statutable offence in the words of the statute creating it; and immediately after the definition of each offence, I have given the form of commitment for it. I have not, however, given the forms of indictments for these offences, or the evidence necessary to sup-

port them: these would be wholly useless to Justices out of sessions, and even at sessions they are not very much consulted by them; and besides, it might interfere with another work of mine,* expressly upon these subjects, which I am anxious to avoid. With respect to the other duties of Justices,—their duties at petty and special sessions, and in all other respects,—I have stated the law upon the several subjects, not diffusely, but still as fully as will be found at all necessary,—it being my constant endeavour, throughout the work, not to use a word too little or too much In these parts of the work, I have also given all the necessary forms of orders, &c., in the same manner as I have done in the other parts of it, as I have already mentioned. It may be necessary however to apprise the reader, that, with some few exceptions, I have not included in the work any matter of a merely local nature or interest; I have not, for instance, included the statutes relating to the streets and buildings of the metropolis, or to the metropolitan police, or other matters of that description. I have also not included the laws of customs and excise, which now occupy so large a portion of Burn's Justice; because the commissioners of customs and excise

* "Peel's Acts, and all the other criminal statutes passed, from the first year of the reign of George the Fourth to the present time, including the criminal clauses of the Reform Act; with forms of indictments, &c., and the evidence necessary to support them." *Third edition; published by Saunders and Benning.*

always furnish those whom they entrust to prosecute for offences against those laws, with the statute and proper forms relating to each particular case, of which the Justices may, and in practice always do, avail themselves. Of smuggling, however, I have treated; for with respect to many of the offences under that head, Justices may be called upon to act promptly, on the instant, before the commissioners shall have time to order a prosecution. With a few exceptions, therefore, that I have now mentioned, this work will be found to comprise the whole of the duties of Justices of the Peace and Parish Officers, with every necessary form that can be required; and as to the forms, I beg to say that they are all drawn by myself, and that I have taken infinite pains that they should be correct.

The work consists of three volumes; the first two treat of the general duties of Justices of the Peace, and are arranged alphabetically; the third treats of the Poor Law. The first volume contains upwards of ninety titles, including the very important heads "Commitment," "Conviction," "County Rate," "Game," "Highway," "Homicide," &c.; to which I have added a very copious index, a very full table of contents, and tables of the statutes and cases occurring throughout the volume. The second volume contains all the other titles, from "Inclosure" to "Wreck," including of course the heads "Justices," "Larceny," "Malicious Injuries," "Master and Servant," "Orders of Justices," "Riot," "Treason,"

&c.; to which I have added a table of contents, and a copious index of the matters in both volumes, with tables of statutes and cases. It will be seen therefore, that I have comprised the whole of the general duties of Justices within the compass of two small pocket volumes. Nor is it necessary that Justices should study the whole even of these, to enable them to execute their duties correctly; if they read attentively the title "Justices," and study carefully the titles "Commitment," "Conviction," and "Orders of Justices," having blank forms of examinations, commitments, summons, warrants and convictions, for use;—and if they read attentively the titles "Sessions," "Evidence," "Trial," and "Appeal," —they may use the other titles by way of reference, occasionally, as they may require them.

To magistrates, such a work, if well executed, must be of incalculable advantage. Besides enabling them to see, at a glance, what they ought to do in any case before them, and how they ought to do it,—they will soon be convinced, by the use of such a work, that their duties, which have hitherto in many instances appeared complicated and difficult, are really simple and easy of execution; and they will thus acquire a confidence in the execution of them.

To country attornies, also, who practise at petty or special sessions, or even at the quarter sessions, it must prove a valuable assistant. They well know the value of a book, which is ready of reference, and from which, on the instant, they can ascertain the

whole law upon any particular subject of the Justices' jurisdiction.

As to the manner in which the work is executed, it would not become me to say a word. I have endeavoured, indeed, not only to state every thing correctly, but also to state it in language so plain and explicit, as to prevent, if possible, others from giving it any other construction than that which I had myself intended. I may, no doubt, have failed in both. And in so very novel an attempt as this is, —an attempt to simplify the law upon subjects which have hitherto been usually deemed complex and difficult,—I may have committed errors, notwithstanding the anxiety I have felt, and the pains I have taken, to avoid them. But I have already, upon more than one occasion, succeeded in simplifying other branches of the law, upon which I have written, which were much more intricate and difficult than this; and I hope and trust that I shall be no less successful upon the present occasion. It may be, that I shall shortly have the pleasure of hearing, that this work has answered the purpose for which I have written it.

J. F. ARCHBOLD.

4, *King's Bench Walk,*
Temple.

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THE JUSTICE OF THE PEACE

AND

PARISH OFFICER.

The duties of a Justice of the Peace, ministerial or judicial, are sufficiently defined by law. The offences for which he may commit or convict the offender, and the other cases in which he may or must act, shall be here treated of, under the following heads:—

ABDUCTION.

Forcible abduction from motives of lucre.] "Where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person: every such offender, and every other person counselling, aiding or abetting such offender, shall be guilty of felony:" transportation for life or for not less than seven years, or imprisonment with or without hard labour for not more than four years. 9 *G.* 4, *c.* 31, *s.* 19.

Commitment:—*For that he the said A. B., on —— at —— feloniously did, from motives of lucre, take away and detain one C. D., against her will, she the said C. D., being then* [*a woman having an interest in certain real* "or" *personal property,* "or" *the heiress presumptive to a person having an interest in certain real property,* "or" *the next of kin to a person having an interest in certain personal property*], *with intent her the said C. D.,* [*to marry* "or" *defile,* "or" *to cause to be married to* "or"

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defiled by some other person unknown :] *against the form of the statute in such case made and provided. And you the said keeper, &c.*

Abduction of a girl under sixteen years of age.] Unlawfully taking, or causing to be taken "any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her:" misdemeanor; fine or imprisonment, or both. 9 *G.* 4, *c.* 31, *s.* 20. And where the consent of the parents was obtained by misrepresentation and fraud, the party having at the time an intent to debauch the girl, Gurney, B. held it to be a case within the act. *R.* v. *Hopkins*, 1 *Car.* & *M.* 254. In one case, Parke, B. ruled that a mere decoying or enticing a girl to go away voluntarily, though by fraudulent pretences, would not amount to the offence contemplated by the statute. *R.* v. *Meadows*, 1 *Car.* & *K.* 399. But in a subsequent case, where it appeared that the girl actually proposed to the man to elope with him, and he, in pursuance of it, went to her father's house at night, placed a ladder against a window, and held it whilst she descended, and both of them then eloped: Atcherley, Serj. held this to be a case within this section; and Tindal, C. J., to whom he afterwards mentioned it, was of the same opinion. *R.* v. *Robins*, 1 *Car.* & *K.* 456. The statute 3 H. 7, c. 2, and 4 & 5 Ph. & M. c. 8, upon the subject of abduction, have been repealed by 9 *G.* 4, *c.* 31, *s.* 1.

Commitment:—*For that he the said A. B. on —— at —— unlawfully did take one C. D. out of the possession and against the will of one J. D. her father* [or as the case may be,] *she the said C. D. then and there being an unmarried girl, under the age of sixteen years, to wit, of the age of —— years: against the form of the statute in such case made and provided. And you the said keeper*, &c.

ABORTION.

"Whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing; or shall unlawfully use any instrument or other means whatsoever, with the like intent:" felony, transportation for life, or for not less than fifteen years, or imprisonment [with or without hard labour, s. 7,] for not more than three years. 1 *Vict. c.* 85,

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ever are equally guilty. And so immaterial is the distinction considered, in practice, that if a man be indicted as principal in the first degree, proof that he was present aiding and abetting another in committing the offence, although his was not the hand that actually did it, will support the indictment *see R.* v. *Crisham*, *Car.* & *M.* 187; and on the other hand, i he be indicted as principal in the second degree, proof that h was not only present, but committed the offence with his own hand, will support the indictment. And persons present at th commission of an offence, are said to be aiding and abetting th party actually committing it, if they be confederated or engage with him in a common design, of which the offence is a par *R.* v. *Tattersall*, 1 *Russ.* 22. *R.* v. *Standley*, *R.* & *Ry.* 30 *R.* v. *Bowen*, *Car.* & *M.* 149, *and see R.* v. *Hornby et al.* 1 *Ca* & *K.* 305, *cor. Coltman J.*, or if by their presence they encourag him in the commission of it. *R.* v. *Murphy*, 6 *Car.* & *P.* 10 So, a person is said to be present aiding and abetting, wh being engaged in the same design with the person who actual commits the offence, although not actually present at the con mission of it, is yet at such a convenient distance as to be ab to come to the immediate assistance of his associate, if r quired, or to watch to prevent surprise, or the like. *See Fo* 350—355. *R.* v. *Goggerly and Whitford*, *R.* & *Ry.* 343. A where a person was waiting outside of a house, to receive goo which his confederate was stealing within, he was holden to a principal in the theft. *R.* v. *Owen*, *Ry.* & *M.* 96. So, p sons present, aiding and abetting in a part of the offence, m if the offence be completed by their confederate, be indict as principals: and therefore, where two persons with th umbrella, screened a third whilst he was breaking into dwelling-house in the day time, and then went away, and w not seen near the place whilst the third party was committi a larceny within the house, Gaselee, J. and Gurney, B., h that they were principals as to the whole offence, namely, t breaking and entering the dwelling-house, and stealing there *R.* v. *Jordan et al.*, 7 *Car.* & *P.* 432.

But if a man be at such a distance from the place wh the offence is committed, that he could not assist in it required, he cannot be deemed a principal; and therefore was holden, that going towards the place where a larceny w to be committed, for the purpose of assisting in carrying off property and assisting accordingly, did not make the part principal in the larceny, where it appeared that he was at s a distance at the time of the felonious taking, that he co not have assisted in it. *R.* v. *Kelly*, *R.* & *Ry.* 421. So, wh persons, having stolen goods from a warehouse, carried th along the street for about thirty yards, and then fetched prisoner, who was apprised of the robbery, but not at acting in it, and he assisted in carrying away the proper

it was holden that he was not a principal but accessory merely. *R.* v. *King*, *R.* & *Ry.* 332. So, where several persons were out for the purpose of committing a felony, but, upon an alarm, ran different ways, and one of them, to avoid being taken, wounded a man who was pursuing him: it was holden that the others could not be deemed principals in this offence. *R.* v. *White*, *R.* & *Ry.* 99. So, where two persons were riding their horses violently along the road, seemingly racing, and the first of them passed a man on horseback without injuring him, but the last rode against him, threw him, and he was killed: Patteson, J. held that the first of the two could not be deemed a principal in the homicide. *R.* v. *Martin et al.*, 6 *Car.* & *P.* 396.

The commitment of a principal in the second degree, may either be in the ordinary form, as a principal in the first degree; or if the principal in the first degree be committed with him, then after describing the offence of the principal in the first degree, the offence of the abettor may be described in the same warrant, thus: *And that the said C. D. feloniously was then and there present, feloniously aiding, abetting and assisting the said A. B. to do and commit the said felony. And you the said keeper*, &c.

Accessory before the fact.] An accessory before the fact to a felony, is one who counsels, incites, moves, procures, hires or commands another to commit it, but is not himself present aiding or abetting in the commission of it. *R.* v. *Gordon*, 1 *Leach*, 515, *East*, *Pl. C.* 352; and *see R.* v. *Tuckwell et al.*, 1 *Car.* & *M.* 215. There cannot consequently be an accessory before the fact to manslaughter; for that offence, in its nature, cannot be premeditated. 1 *Hale*, 616. The doctrine as to accessories, also, is confined entirely to felonies; for in treason and misdemeanors, those who, by counsel or incitement, &c. would be accessory before the fact in felony, are deemed principals, and prosecuted and punished accordingly. *See R.* v. *Clayton et al.*, 1 *Car.* & *K.* 128. It is not necessary in order to constitute the offence of accessory, that there should be any direct communication between him and the principal; the procurement may be through the intervention of an agent. *R.* v. *Cooper*, 5 *Car.* & *P.* 534. And if managed through an agent, it is not necessary that the principal should be named by the accessory; if the latter desire the agent to procure some person to commit the offence, without naming any, and the agent accordingly procure a person, wholly unknown to the accessory, to commit it, it will be sufficient to constitute the offence of accessory before the fact. *Id.* If the principal felon be unknown, the warrant of commitment of the accessory should be accordingly; and if it afterwards turn out that he is known,

or even was so at the time, this will not affect the validity of the warrant. But if an indictment against an accessory before the fact, state the principal to be unknown, and it turn out in evidence that he is known, this will be a fatal variance, and the defendant must be acquitted. *R.* v. *Walker*, 3 *Camp.* 264. *See R.* v. *Bush*, *R.* & *Ry.* 372.

The accessory before the fact may be tried either with the principal or after his conviction, or he may be tried as for a substantive felony, whether the principal have been convicted or be amenable to justice or not. 7 *G.* 4, *c.* 64, *s.* 9. He is usually punishable in the same manner as a principal; but this of course depends upon the statute creating or punishing the offence. He is so punishable in all offences within stat. 7 & 8 G. 4, c. 29, (the Larceny Act,) by sect. 61; in all offences within stat. 7 & 8 G. 4, c. 30, (Malicious Injuries,) by sect. 26; in all offences against stat. 11 G. 4 & 1 W. 4, c. 66, (the Forgery Act,) by sect. 25; and in all offences against stat. 2 W. 4, c. 34, (Coin,) by sect. 18. In some cases, however, a less punishment is assigned to him.

It may be necessary to add, that a man cannot be committed or indicted as accessory before the fact to a felony, unless it be proved that the felony has been actually committed. But soliciting or inciting a person to commit a felony, although the felony be not afterwards in fact committed, is a misdemeanor at common law, *R.* v. *Higgins*, 2 *East*, 5, punishable with fine or imprisonment, or both, and the party may be committed and indicted for it.

Commitment with principal:—After describing the offence of the principal, state that of the accessory thus: "*And that the said C. D., before the said felony was so committed as aforesaid, did feloniously* [*and maliciously*] *incite, move, procure, counsel, and command the said A. B. to do and commit the said felony. And you the said keeper,*" &c.

Commitment without the principal:—"*For that one* [*or some person unknown*] *on* —— *at* ——, *did feloniously,*" *&c.*, describing the offence as in a commitment of the principal, "*and that the said C. D., before the said felony was so committed, did feloniously and maliciously incite, move, procure, counsel and command the said* [*A. B.* or *person unknown*] *to do and commit the said felony. And you the said keeper,*" &c.

Accessory after the fact.] After a felony has been committed, if any person receive, harbour, or assist the principal felon, knowing him to have committed the felony, he is deemed an accessory after the fact. And this extends as well to the offence of manslaughter, as to other felonies. *R.* v. *Greenacre*, 8 *Car.* & *P.* 35. But it must be considered as having reference to

felony only; the same receipt, &c., which in felony will make a man accessory after the fact, will, in treason, make the party a principal traitor, 1 *Hale*, 238, but in misdemeanors is not punishable at all. 1 *Hale*, 613.

An accessory after the fact to felony, may be tried either in the county where he has been accessory, or in that in which the original felony was committed. 7 *G.* 4, *c.* 64, *s.* 10. He may be tried either with the principal, or after the principal has been convicted; it is not necessary however that the principal should be attainted, to enable the prosecutor to proceed against the accessory after the fact. *Id. s.* 11. The offence is a felony; but is punishable with much less severity than that of the principal or the accessory before the fact. In felonies within stat. 7 & 8 G. 4, c. 29, (the Larceny Act,) accessories after the fact are punishable with imprisonment, with or without hard labour, for any term not exceeding two years, by sect. 61; and the same in felonies, within stat. 7 & 8 G. 4, c. 30, (Malicious injuries,) by sect. 26; in felonies within stat. 9 G. 4, c. 31, (Offences against the Person,) by sect. 31; in felonies within stat. 11 G. 4 & 1 W. 4, c. 66, (Forgery,) by sect. 25; and in felonies within stat. 2 W. 4, c. 32, (Coin,) by sect. 18.

Commitment with the principal:—After describing the offence of the principal, state that of the accessory thus:—"*And that the said C. D. well knowing the said A. B. to have committed the felony aforesaid, did afterwards on* ——, *at* ——, *feloniously receive, harbour, and maintain the said A. B. And you the said keeper,*" &c.

Commitment without the principal:—"*For that one A. B.* [or *some person unknown*] *on* ——, *at* ——, *did feloniously,*" &c., describing the offence, as in a commitment of the principal; "*And that the said C. D., well knowing the said A. B. to have committed the felony aforesaid, did afterwards on* ——, *at* ——, *feloniously receive, harbour, and maintain the said A. B. And you the said keeper,*" &c.

ACCUSING OF CRIME.

Threatening to accuse, &c., with intent to extort.] If any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing accusing or threatening to accuse any person of any crime punishable by law with death, transportation, or pillory, or of any assault with intent to com-

mit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime as hereinafter defined," [*i. e.* "buggery, committed either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise, or threat offered or made to any person, whereby to move or induce such person to commit or permit the said abominable crime," *sect.* 9,] "with a view or intent to extort or gain from such person any chattel, money, or valuable security:"—felony, transportation for life, or not less than seven years, or imprisonment with or without hard labour for not more than four years. 7 & 8 *G.* 4, *c.* 29, *s.* 8. *Vide post, tit. Letter, Threatening.*

To constitute an offence within this statute, there must be an accusation or threat to accuse; and therefore where a man was already indicted for a rape, and another person, not connected with the prosecution, threatened him that if he did not give him 30*l.* he would hire witnesses to prove him guilty: this was holden not to be a threat to accuse, within the meaning of the statute; the accusation had been already made, and this was at most a threat to support it by evidence. *R.* v. *Joseph Gill, cor. Bayley, J., Sum. Ass. York,* 1829. If the offence consist of a threat to accuse, it must be proved to have been made use of to the party threatened, *See R.* v. *Dunkeley et al., Ry.* & *M.* 90, or, at least, if made use of to a third person, it must appear that it was so done, with intent that he should mention it to the party threatened. *See Dict. by the Judges in R.* v. *Paddle, R.* & *Ry.* 484. The intent to extort money, &c., may either be expressed, or may be implied from the accusation or threat itself, or from other circumstances. Where the threat was by a letter, sent to the prosecutor by post, it was holden that the offender might be indicted for it in the county where it was delivered to the prosecutor; *R.* v. *Esser,* 2 *East, P. C.* 1125. *R.* v. *Girdwood, Id.* 1120; in other cases, the party should be prosecuted in the county, &c., in which the accusation is made or threat used.

Commitment for a verbal accusation or threat:—*On* ——, *at* ——, *feloniously did* [*threaten the said C. D. to*] *accuse him the said C. D. of having* [*attempted and endeavoured to commit a rape upon Ann, the wife of the said A. B.,* or as the case may be,] *with a view and intent thereby to extort and gain money* [chattel, money, or valuable security] *from the said C. D., against the form of the statute in such case made and provided. And you the said keeper,* &c.

Commitment for sending a letter, accusing or threatening to accuse:—"*On* ——, *at* ——, *knowingly and feloniously did*

send [or *deliver*] *to the said C. D. a certain letter* [or *writing*] *directed to the said C. D. threatening to accuse* [or *accusing*] *him the said C. D. of having* [*attempted and endeavoured to commit a rape upon Ann, the wife of the said A. B.,*" or as the case may be,] "*with a view and intent to extort and gain money*" [chattel, money, or valuable security] "*from the said C. D., against the form of the statute in such case made and provided. And you the said keeper,*" &c.

Accusing or threatening, and thereby extorting.] "Whosoever shall accuse or threaten to accuse any person of the abominable crime of buggery, committed with mankind or with beast, or of any assault with intent to commit the said abominable crime, or of any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise, or threat, to any person whereby to move or induce such person to commit or permit the said abominable crime,—with a view or intent in any of the cases aforesaid to extort or gain from such person, *and* shall, by intimidating such person by such accusation or threat, extort or gain from such person any property;" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 87, *s.* 4. This offence formerly amounted to robbery, and was capital; 7 & 8 *G.* 4, *c.* 29, *s.* 7, *and see* 1 *Arch. P. A.* 293; but the section of the statute, by which it was declared to be robbery, has been recently repealed, by stat. 1 Vict. c. 87, s. 1.

Commitment:—"*On* ——, *at* ——, *feloniously did* [*threaten the said C. D. to*] *accuse him the said C. D. of having* [*attempted and endeavoured to commit the abominable crime of buggery with and upon him the said A. B.*, or *with and upon one E. F.*" or as the case may be,] "*with a view and intent then and there to extort and gain property from the said C. D., and that the said A. B., by then and there intimidating the said C. D. by the said accusation* [or *threat*] *as aforesaid, did then and there extort and gain from the said C. D.* [*ten pieces of the current gold coin of the realm called sovereigns,*" *&c.*, as in larceny] "*the property of him the said C. D.: against the form of the statute in such case made and provided. And you the said keeper,*" &c.

Obtaining money from a person, within the metropolitan police district, by threatening to complain to a magistrate for any misdemeanor, or as an inducement to forbear making such complaint, subjects the party to a penalty not exceeding 10*l.* 3 & 4 *Vict. c.* 84, *s.* 11.

Threatening to publish a libel, &c., with intent to extort.] "If any person shall publish or threaten to publish any libel upon any other person,—or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing, of any matter or thing touching any other person,—with intent to extort any money or security for money or any valuable thing from such or any other person,—or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust:—every such offender, on being convicted thereof, shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years; provided always that nothing herein contained shall in any manner alter or affect any law now in force in respect of the sending or delivery of threatening letters or writings." 6 & 7 *Vict. c.* 96, *s.* 3.

ADMIRALTY.

Its jurisdiction.] The admiral has exclusive jurisdiction of all offences committed on the high seas, and within the harbours, creeks and havens of foreign countries. But within the harbours, creeks and havens of this country, the courts of common law, and not the admiral, have jurisdiction: as for instance, if an imaginary line were drawn across the mouth of such creek, &c., from one point of land to the other,—of all offences committed within such line, the common law would have jurisdiction; but all offences committed without the line would be within the jurisdiction of the admiral. As to the sea shore, below low water-mark, the admiral has exclusive jurisdiction; above high water-mark, the courts of common law have exclusive jurisdiction; and between high and low water-mark, the courts of common law and the admiral have alternate jurisdiction—the courts of common law have jurisdiction of all offences committed on the strand, when the tide is out—the admiral, jurisdiction of offences committed on the water, when the tide is in.

Formerly, if a man upon land fired a loaded pistol or gun at a man upon the seas and killed him, the offence was deemed to be within the admiralty jurisdiction; for the offence was deemed to have been committed where the death happened, and not at the place from whence the cause of death proceeded. *R.* v. *Combes,* 1 *East, P. C.* 369. But now, by stat. 9 G. 4,

25 G. 2, c. 36, ss. 5, 8, p. 423.—ss. 5, 6, 7, 9, p. 424.
27 G. 2, c. 2, s. 1, pp. 300, 394.
27 G. 2, c. 20, ss. 1, 2, p. 380.
30 G. 2, c. 21, p. 463.
33 G. 2, c. 27, ss. 11, 13, p. 464.
6 G. 3, c. 25, ss. 1, 2, 3, p. 117.—ss. 5, 6, p. 118.
12 G. 3, c. 61, s. 29, p. 594.—ss. 1, 5, 13, 14, p. 595.—ss. 2, 3, 6, 7, 8, p. 596.—ss. 10, 11, 12, 13, 14, p. 597.—ss. 18, 30, p. 598—ss. 19, 20, 21, 22, p. 599.—ss. 23, 24, 25, 26, 27, p. 600.
13 G. 3, c. 31, pp. 285, 286.
17 G. 3, c. 42, ss. 1, 2, 5, p. 230.—ss. 1, 2, 6, 7, 8, p. 231.
18 G. 3, c. 19, s. 4, p. 318.—ss. 5, 9, p. 319.—s. 1, p. 365.—ss. 2, 3, p. 365.—s. 4, p. 737.
18 G 3, c. 33, p. 463.
18 G. 3, c. 47, pp. 88, 99.
20 G. 3, c. 36, s. 1, p. 98.
26 G. 3, c. 71, ss. 1, 2, p. 720.—ss. 3, 5, 6, p. 722.—ss. 4, 8, p. 723.—ss. 10, 11, 14, 15, p. 724.—ss. 9, 13, p. 725.—ss. 7, 12, 16, 17, p. 726.
27 G. 3, c. 29, pp. 364, 451.
31 G. 3, c. 32, s. 5, p. 425.—s. 10, p. 426.
32 G. 3, c. 57, s. 12, p. 89.—s. 1, p. 99.—ss. 1, 2, 3, 4, 5, p. 106.—ss. 6, 9, p. 107.—ss. 7, 9, p. 108.—ss. 8, 10, p. 110.—ss. 13, 14, p. 117.—s. 11, pp. 120, 393.—ss. 11, 12, 14, p. 121.
33 G. 3, c. 54, s. 1, p. 494.—s. 15, p. 496.—s. 16, p. 497.
33 G. 3, c. 55, s. 1, p. 122.—s. 3, p. 380.
35 G. 3, c. 101, s. 6, p. 163.
37 G. 3, c. 90, s. 30, p. 151.
38 G. 3, c. 65, ss. 1, 3, 4, p. 301.—ss. 2, 5, 6, p. 302.—ss. 7, 9, 16, p. 303.
39 G. 3, c. 37, p. 12.
41 G. 3, c. 23, p. 667.
41 G. 3, c. 78, s. 2, p. 309.
42 G. 3, c. 46, ss. 1, 2, 3, p. 103.—s. 5, p. 110.
43 G. 3, c. 59, s. 5, p. 232.
44 G. 3, c. 92, s. 3, p. 286.
45 G. 3, c. 33, p. 463.
45 G. 3, c. 92, s. 1, pp. 156, 286.
48 G. 3, c. 61, p. 463.
48 G. 3, c. 75, ss. 3, 4, 5, p. 416.—ss. 1, 7, 9, p. 417.—ss. 5, 6, 8, 10, 14, p. 418.

and proceed therein, as if it had been committed within the limits of his ordinary jurisdiction.

The examination and commitment are the same as in ordinary cases, except that they allege the offence to have been committed "on the high seas, within the jurisdiction of the admiralty of England:" or "beyond the seas, at a certain place called ——, in the kingdom of ——."

Trial and punishment of offences at sea, &c.] By stat. 28 H. 8, c. 15, all treasons, felonies, robberies, murders, and conspiracies committed on the seas, or in any haven, &c., where the admiral has jurisdiction, shall be tried according to the course of the common law, in such places and counties as shall be appointed by the king's commission. To these offences have since been added stabbing and other attempts to murder or maim, &c., and all other felonies, within stat. 1 Vict. c. 85, by the 10th section of that act; all offences within the statute against forgery, 11 G. 4 & 1 W. 4, c. 66, by sect. 27; all offences within stat. 2 W. 4, c. 34, relating to counterfeiting the coin and seals, &c. by sect. 20 of that act; and generally, all other offences committed on the high seas, out of the body of any county of this realm. 39 G. 3, c. 37. The mode of proceeding by commission under stat. 28 H. 8, c. 15, however, was found to occasion considerable delay in the trial of these offences; and therefore the legislature, upon the establishment of the central criminal court, gave that court jurisdiction of all offences "committed or alleged to have been committed on the high seas, and other places within the jurisdiction of the admiralty of England;" 4 & 5 W. 4, c. 36, s. 22; *see R.* v. *Wallace*, 1 *Car.* & *M.* 200; or he may now be indicted, arraigned, tried and sentenced by any court of oyer and terminer and gaol delivery for the county, to the gaol of which he is committed for trial, in like manner as if the offence had been committed within the county, riding or division for which such court shall be holden,—the venue in the margin of the indictment being the said county, but the facts to be alleged to have been committed "on the high seas." 7 & 8 *Vict. c.* 2, *s.* 1, 2, 3.

What is above mentioned relates to the trial of offences committed on the high seas, &c., within the jurisdiction of the admiral. But if persons charged in England, as principals or accessories, with murder or manslaughter committed on land out of the United Kingdom, whether within the Queen's dominions or without, be committed for trial or admitted to bail, a commission shall issue, under the great seal, to such persons as the lord chancellor shall appoint, for the purpose of trying them; but it is provided that peers against whom any indictment shall be found before such commissioners, shall be tried by their peers, as heretofore used. 9 *G.* 4, *c.* 31, *s.* 7.

As to the punishment of offences committed at sea: by stat. 7 & 8 G. 4, c. 28, s. 12, all offences prosecuted in the high court of Admiralty of England, shall, upon every first and subsequent conviction, be subject to the same punishments, whether of death or otherwise, as if such offences had been committed upon the land. And this Act would, I think, be holden to extend to all offences committed at sea, for which the offenders are prosecuted before the Central Criminal Court.

AFFRAY.

At common law.] Lord Coke (3 *Inst.* 158,) and after him Hawkins (1 *Hawk. c.* 63, *s.* 1,) define an affray to be a public offence to the terror of the people. This indeed is not very definite. But it may safely be laid down, that all violence not amounting to felony, and all preparations for violence, used publicly, and calculated to terrify the people, is an affray. If two men fight in the public highway, it is an affray. If several persons arm themselves in a dangerous and unusual manner, for the purpose of a breach of the peace, and show themselves publicly thus armed, it is an affray. But no words, however quarrelsome or threatening, amount to that offence. 1 *Hawk. c.* 63, *s.* 2.

An affray is a misdemeanor at common law, punishable with fine or imprisonment or both. 1 *Hawk. c.* 63, *s.* 20.

Commitment:—"*On* ——, *at* ——, *in a certain public street and highway there, unlawfully and to the great terror and disturbance of Her Majesty's subjects there being, did make an affray. And you the said keeper,*" &c.

By statute.] By the statute of Northampton, 2 Ed. 3, c. 3, no man shall come before the king's justices, or other of the king's ministers doing their office, with force and arms, or bring any force in affray of the peace, or go or ride armed, by night or by day, in fairs, markets, or elswhere, or in presence of the justices or other ministers,—upon pain of forfeiting his armour to the king, and his body to prison, at the king's pleasure; constables and wardens of the peace within their wards shall have power to execute this Act.

According to Hawkins, a justice of the peace may, *ex officio*, proceed to the place where such an affray occurs, may seize the offender's arms, and commit the offender himself to prison. Or if the matter take place in his absence, he may have the facts found by an inquest taken before him, and may commit

the offender. The justice should then make a record of the whole proceeding, and transmit it to the Exchequer. 1 *Hawk. c.* 63, *ss.* 5, 6. It is scarcely necessary to say that this very rarely occurs in practice.

How and by whom suppressed.] Any private persons, if they see others fighting, may lawfully part them, may stay them until the heat be over, and may then deliver them to a constable, for the purpose of his taking them before a justice of the peace. 1 *Hawk. c.* 63, *s.* 11. *A fortiori* may a justice of peace interfere in this way. *Id. ss.* 18, 19. So a constable not only may, but must interfere, if he sees persons fighting or preparing to attack each other; he may imprison them for a reasonable time, until the heat be over, and should then take them before a justice of the peace; *Id. s.* 14; but he cannot arrest them without warrant, where the affray has not been within his view. *Id. s.* 17.

AGENT, BANKER, &c.

Embezzlement of money, &c. by.] "If any money or security for the payment of money, shall be intrusted to any banker, merchant, broker, attorney, or other agent, with any direction in writing to apply such money or any part thereof, or the proceeds or any part of the proceeds of such security, for any purpose specified in such direction, and he shall, in violation of good faith and contrary to the purpose so specified, in any wise convert to his own use or benefit such money, security, or proceeds, or any part thereof respectively:" misdemeanor, transportation for not more than 14 nor less than 7 years; or such fine, or imprisonment [with or without hard labour], or both, as the court shall award. 7 & 8 *G.* 4, *c.* 29, *s.* 49. This, however, is not to apply to trustees, or to mortgagees of real or personal property, in respect of any act by them done with relation to the property in trust or mortgage; nor to bankers, &c. receiving money payable on such security, according to the tenor and effect thereof; nor to bankers, &c. selling, transferring or disposing of such securities or effects, to the extent of any lien, claim, or demand enabling them by law to do so. *Id. s.* 50. *See also sect.* 52, *post*, p. 17.

Where the prisoner, a merchant and the private friend of the prosecutor, advised him, as money was likely to be scarce, to get bills discounted to answer any demand upon him, and offered to get them discounted for him; one bill

—s. 48, p. 436.—s. 5, 449.—s. 53, p. 455.—s. 30, p. 527.—s. 66, p. 528.

7 & 8 G. 4, c. 30, s. 26, pp. 6, 7.—s. 28, p. 130.—s. 13, p. 233.—s. 17, p. 241.—ss. 16, 25, p. 246.—s. 40, p. 371.—s. 39, p. 385.—s. 25, p. 443.—s. 14, p. 678.

7 & 8 G. 4, c. 31, s. 1, p. 728.—ss. 3, 8, p, 729.—ss. 8, 10, 11, p. 730.—ss. 2, 11, p. 731.—ss. 12, 14, p. 732.—s. 15, p. 733.

7 & 8 G. 4, c. 49, p. 511.

9 G. 4, c. 15, p. 70.

9 G. 4, c. 31, s. 19, p. 1.—ss. 1, 20, p. 2.—s. 13, p. 3.—s. 31, p. 7.—ss. 7, 8, pp. 11, 12.—s. 27, p. 135.—ss. 29, 33, p. 136.—ss. 27, 28, 34, p. 137.—s. 35, p. 138.—ss. 27, 34, p. 139.—s. 25, p. 140.—ss. 25, 26, pp. 141, 142.—s. 22, p. 205.—ss. 17, 18, p. 243.—s. 17, p. 244.—s. 29, p. 251.—s. 1, p. 257.—s. 21, p. 258.—s. 23, p. 261.—s. 14, pp. 305, 306.—ss. 2, 3, 9, 10, p. 707.—s. 8, p. 709. s. 7, p. 710.—ss. 3, 31, p. 718.

9 G. 4, c. 32, s. 2, p. 450.—ss. 3, 4, p. 453.—s. 2, 479.

9 G. 4, c. 40, p. 394.

9 G. 4, c. 61, s. 1, p. 19.—s. 2, p. 20.—ss. 3, 6, 7, 8, p. 21.—s. 4, p. 22.—ss. 1, 5, 14, 16, p. 24.—s. 10, p. 25.—s. 11, p. 26.—ss. 9, 14, p. 27.—ss. 12, 13, p. 28.—ss. 15, 17, p. 29.—s. 18, p. 30.—s. 19, p. 31.—ss. 20, 21, p. 32.—s. 21, pp. 35, 36.—ss. 22, 31, 32, 33, p. 37.—ss. 23, 25, 34, p. 38.—ss. 26, 27, 34, p. 39.—s. 27, p. 40.—ss. 24, 28, 29, p. 41.—ss. 30, 36, p. 42.—s. 37, p. 43.

9 G. 4, c. 69, ss. 1, 12, pp. 529, 531.—ss. 2, 9, p. 532.—ss. 2, 4, p. 533.—ss. 3, 5, 6, 7, p. 534.

9 G. 4, c. 77, s. 20, p. 668.—ss. 5, 9, p. 674.—s. 16, p. 679.—s. 17, p. 688.—s. 18, p. 701.

10 G. 4, c. 56, s. 2, p. 494.—ss. 2, 3, 9, 10, 27, p. 495.—ss. 1, 27, p. 497.—ss. 25, 27, 498.—ss. 28, 29, p. 499.

11 G. 4 & 1 W. 4, c. 66, s. 25, pp. 6, 7.—s. 27, p. 12.

1 W. 4, c. 54, p. 464.

1 W. 4, c. 64, ss. 1, 30, p. 44.—s. 2. p. 45.—ss. 2, 4, 5, 10, p. 47.—s. 6, p. 48.—s. 13, p. 52.—s. 11, p. 54.—s. 13, p. 56.—s. 15, p. 58.—ss. 21, 22, p. 59.—ss. 25, 26, p. 60.—s. 19, p. 61.—s. 16, p. 63.—ss. 17, 18, p. 64.—ss. 20, 24, 27, p. 65.—ss. 28, 29, 32, p. 66.

1 W. 4, c. 66, s. 2, p. 477.—s. 3, p. 478.—s. 4, p. 479.—s. 10, p. 483.—ss. 3, 12, 30, p. 484.—ss. 13, 14, p. 485.—ss. 15, 16, p. 486.—ss. 17, 18, p. 487.—ss. 19, 28, p. 488.—ss. 6, 8, p. 489.—ss. 5, 6, 9, p. 490.—ss. 11, 20, p. 491.—ss. 21, 22, p. 492.—ss. 24, 25, 26, 27, p. 493.

1 & 2 W. 4, c. 22, ss. 75, 76, p. 602.

security, or the proceeds of the same or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate or any part thereof;" misdemeanor, transportation for not more than fourteen nor less than seven years; or such fine, or imprisonment, or both, as the court shall award. 7 & 8 *G.* 4, *c.* 29, *s.* 49. The 50th section (*ante*, p. 14), providing that the act shall not apply to trustees, mortgagees, &c. applies equally to this as to the last offence. *See also sect.* 52 *post*, p. 17.

Commitment:—" *That on* ——, *at* ——, *one C. D. did intrust to A. B. for safe custody* [or *for the purpose of* ——] (*he the said A. B. being then a banker or agent*, or as the case may be), *a certain promissory note, drawn by one E. F. for the payment of fifty pounds* [or as the case may be], *without any authority to sell, negociate, transfer, or pledge the same; and that the said A. B. afterwards on* ——, *at* ——, *in violation of good faith, and contrary to the object and purpose for which the said promissory note was so intrusted to him as aforesaid, unlawfully did negociate, transfer, and convert to his own use and benefit* [or as the case may be], *the said promissory note; against the form of the statute in such case made and provided. And you the said keeper*," &c.

Factor pledging, &c. the property of his principal.] "If any factor or agent, intrusted, for the purpose of sale, with any goods or merchandize, or intrusted with any bill of lading, warehouse-keeper's or wharfinger's certificate, or warrant or order for delivery of goods or merchandize, shall for his own benefit, and in violation of good faith, deposit or pledge any such goods or merchandize, or any of the said documents, as a security for any money or negociable instrument borrowed or received by such factor or agent at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received:" misdemeanor, transportation for not more than fourteen nor less than seven years; or such fine or imprisonment, or both, as the court shall award. 7 & 8 *G.* 4, *c.* 29, *s.* 51.

Commitment:—" *That on* —— *at* ——, *one C. D. did intrust to A. B.* (*he the said A. B. being then and there a factor and agent*) *one thousand quarters of wheat, of the value of three thousand pounds, for the purpose of selling the same*, [or as the case may be]; *and that the said A. B. afterwards on* —— *at* ——, *for his own benefit, and in violation of good faith, unlawfully did deposit and pledge the said one thousand quarters of wheat with one E. F. as a security for a sum of two thousand pounds* [or as the case may be] *by the said A. B. then borrowed and received* [or *by the said A. B. before that time borrowed and*

30, 35, p. 113.—ss. 33, 34, 35, 36, p. 114.—s. 37, pp. 119, 123.—s. 38, p. 136.

5 & 6 W. 4, c. 20, s. 21, pp. 542, 543, 544.

5 & 6 W. 4, c. 23, p. 500.

5 & 6 W. 4, c. 33, s. 3, p. 154.—s. 2, p. 255.

5 & 6 W. 4, c. 38, s. 3, pp. 298, 389.—s. 2, p. 573.—ss. 7, 8, p. 576.

5 & 6 W. 4, c. 43, p. 350.

5 & 6 W. 4, c. 50, s. 21, p. 232.—s. 22, p. 233.—s. 98, p. 392.—s. 72, p. 402.—ss. 5, 112, 113, 114, 115, 116, p. 613.—s. 6, p. 614.—ss. 8, 11, 12, 36, 37, p. 615.—ss. 18, 19, p. 616.—ss. 13, 14, 15, 18, p. 617.—ss. 15, 16, 17, p. 618.—ss. 6, 24, 26, p. 619.—ss. 10, 44, 45, p. 620.—ss. 20, 36, 42, p. 621.—ss. 38, 45, p. 622.—ss. 27, 28, 29, p. 623.—ss. 30, 31, 32, 33, 34, p. 624.—ss. 105, 106, 107, 108, p. 625.—ss. 58, 59, p. 627.—s. 60, p. 628.—s. 62, p. 629, 630.—s. 23, pp. 630, 631.—ss. 22, 23, p. 632.—s. 21, p. 633.—s. 94, 97, p. 634.—ss. 95, 96, p. 635.—ss. 95, 98, 100, p. 636.—ss. 51, 99, 111, p. 637.—ss. 52, 53, 54, p. 638.—ss. 46, 53, 54, 57, p. 639.—ss. 35, 56, p. 640.—ss. 47, 55, p. 641.—ss. 48, 50, 80, 81, p. 642.—s. 25, p. 643.—s. 82, p. 645.—s. 83, p. 646.—ss. 84, 93, p. 647.—s. 85, p. 648.—ss. 86, 88, p. 649.—ss. 87, 89, p. 650.—ss. 90, 91, 92, p. 651.—ss. 63, 64, p. 652.—ss. 65, 66, 67, p. 653.—ss. 68, 69, p. 654.—s. 70, p. 655.—ss. 72, 73, p. 656.—ss. 74, 75, p. 658.—ss. 76, 77, p. 659.—s. 78, 79, 101, p. 661.—s. 102, p. 663.—s. 103, p. 664.—s. 105, p. 666.—ss. 106, 107, 108, 110, p. 667.—s. 109, p. 668.

5 & 6 W. 4, c. 59, s. 2, p. 246.—ss. 3, 4, p. 247.—ss. 6, 9, 10, 11, 13, 14, 15, 18, p. 248.—ss. 12, 17, 20, p. 249.—s. 7, pp. 720, 723.—s. 8, p. 721.

5 & 6 W. 4, c. 63, s. 9, p. 262.—s. 17, p. 394.

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5 & 6 W. 4, c. 76, s. 105, p. 74.—s. 76. p. 320.—ss. 76, 77, 78, p. 321.—ss. 79, 80, 81, 130, p. 322.—s. 82, p. 323.—s. 83, p. 355.—s. 111, p. 383.—s. 62, pp. 387, 391.—s. 92, pp. 410, 411.—s. 114, p. 590.—s. 115, p. 591.

6 W. 4, c. 4, p. 237.

6 W. 4, c. 11, ss. 2, 11, p. 68.—ss. 3, 4, 5, 6, 7, 8, 9, p. 69.—s. 15, p. 70.

6 & 7 W. 4, c. 37, s. 2, p. 219.—ss. 8, 20, p. 220.—ss. 9, 11, p. 221.—ss. 3, 12, 13, p. 222.—ss. 4, 5, 6, p. 223.—s. 7, p. 224.—ss. 14, 16, p. 225.—ss. 13, 15, 17, 18, 20, 31, p. 226.—ss. 19, 23, 24, p. 227.—ss. 17, 21, p. 228.—ss. 24, 25, 26, 29, 30, 32, 33, p. 229.

the payment of any greater sum of money than the amount which at the time of such consignment, deposit, or transfer, or delivery was justly due and owing to such agent from his principal, together with the amount of any bills of exchange drawn by or on account of such principal, and accepted by such agent: provided also, that the conviction of any such agent so convicted as aforesaid shall not be received in evidence in any action at law or suit in equity against him, and no agent intrusted as aforesaid shall be liable to be convicted by any evidence whatsoever in respect of any act done by him, if he shall, at any time previously to his being indicted for such offence, have disclosed such act, on oath, in consequence of any compulsory process of any court of law or equity in any action, suit, or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have disclosed the same in any examination or deposition before any commissioner of bankrupt."

The commitment in this case may readily be framed from the last.

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I. Alehouses licensed by the magistrates.

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Annual licensing meeting.] "In every division of every county and riding, and of every division of the county of *Lincoln*,—and in every hundred of every county, not being within any such division,—and in every liberty, division of every liberty, county of a city, county of a town, city, and town corporate, in that part of the United Kingdom called *England*,—there shall be annually holden a special session of the justices of the peace (to be called the general annual licensing meeting), for the purpose of granting licences to persons keeping or being about to keep inns, ale-houses, and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises therein specified." 9 *G.* 4, *c.* 61, *s.* 1.

When and where to be holden.] "Such meetings shall be holden in the counties of *Middlesex* and *Surrey* within the first ten days of the month of *March*, and in every other county on some day between the twentieth day of *August* and the fourteenth day of *September* inclusive; and that it shall be lawful for the justices acting in and for such county or place, assembled at such meeting or at any adjournment thereof, and not as hereinafter disqualified from acting, to grant licences, for the purposes aforesaid, to such persons as they the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper." *Id. s.* 1.

7 & 8 V. c. 24, p. 476.

7 & 8 V. c. 29, s. 2, p. 529.

7 & 8 V. c. 33, s. 8, p. 308.—s. 7, p. 309.—ss. 1, 2, 3, 5, p. 404.

7 & 8 V. c. 50, p. 558.

7 & 8 V. c. 52, s. 4, p. 311.—s. 1, p. 312.—s. 3, p. 688.

7 & 8 V. c. 62, ss. 1, 3, p. 240.—s. 2, p. 241.

7 & 8 V. c. 87, s. 1, p. 720.—ss. 2, 3, 4, 5, 6, 7, 8, 9, p. 721.

7 & 8 V. c. 92, p. 386.—s. 17, p. 388.

7 & 8 V. c. 101, ss. 12, 13, p. 89.—s. 12, pp. 107, 111.—s. 9, p. 165.—s. 1, p. 166.—s. 2, p. 167.—s. 3, p. 168.—ss. 4, 5, p. 169.—ss. 6, 7, 8, p. 170.—ss. 9, 10, 11, p. 171.—s. 2, 7, p. 176.—ss. 2, 3, p. 177.—s. 70, p. 181.—ss. 3, 4, p. 183.—ss. 5, 11, p. 188.—ss. 5, 7, 8, p. 189.—s. 3, p. 190.—s. 5, p. 191.—ss. 3, 7, p. 194.—s. 3, pp. 195, 198.—s. 4, p. 202.—ss. 6, 8. p. 204.—s. 31, p. 417.

8 & 9 V. c. 8, s. 74, p. 67.

8 & 9 V. c. 10, ss. 1, 2, p. 172.—ss. 3, 4, 5, p. 173.—ss. 6, 7, p. 174.—ss. 8, 9, 10, 11, 12, p. 175.—s. 2, pp. 176, 178.—ss. 4, 10, p. 179.—ss. 4, 7, p. 184.—s. 8, p. 197.—s. 3, pp. 201, 202.—s. 6, p, 203.—s. 5, p. 204.

8 & 9 V. c. 47, s. 2, p. 431.—ss. 3, 5, 7, p. 432.—ss. 4, 6, 8, p. 433.

8 & 9 V. c. 53, pp. 668, 671.

8 & 9 V. c. 60, p. 500.

8 & 9 V. c. 68, s. 1, p. 438.—ss. 2, 5, p. 439.—ss. 3, 4, p. 440.

8 & 9 V. c. 71, p. 642.

8 & 9 V. c. 109, s. 11, p. 34.—ss. 1, 17, p. 546.—s. 4, p. 547.—ss. 2, 5, 9, p. 548.—s. 3, p. 549.—ss. 6, 7, p. 550.—ss. 8, 10, p. 551.—s. 11, p. 553.—ss. 12, 13, p. 554.—ss. 14, 20, 21, 25, p. 555.

8 & 9 V. c. 110, s. 1, p. 412.—ss. 6, 8, p. 413.—ss. 2, 4, p. 414.—ss. 3, 5, 7, p. 415.

8 & 9 V. c. 111, s. 1, p. 395.—ss. 1, 2, 3, 5, 6, 10, p. 396.—ss. 4, 7, 8, p. 397.—ss. 9, 11, p. 398.—ss. 12, 13, 21, p. 399.—ss. 14, 15, p. 400.—s. 16, p. 401.—ss. 16, 17, 18, 20, p. 402.—ss. 5, 19, p. 403.

8 & 9 V. c. 118, s. 67, p. 631.—s. 72, p. 638.—s. 100, p. 658.

8 & 9 V. c. 126, p. 394.

9 & 10 V. c. 27, s. 1, p. 494.—ss. 3, 10, p. 495.—ss. 12, 13, p. 496.—s. 15, p. 498.—s. 19, p. 499.

about to be licensed under this act), from acting on any of the occasions aforesaid, by reason of the legal estate in such house being vested in him as trustee for any person or persons or for any charitable or public use or purpose whatsoever." *Id. s.* 6.

"Whenever, at any of the meetings to be holden as aforesaid for any liberty, county of a city, county of a town, city, or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city, or town corporate, who are not disqualified,—it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city, or town corporate, and not disqualified from acting, to act within such liberty or place, and with the justice or justices thereof (not as hereinbefore disqualified) who shall be present at any such meeting as aforesaid, for the purpose of granting or transferring licences under, or of hearing complaints as to offences against, this act; any law, custom, or usage to the contrary notwithstanding." *Id. s.* 7. But this is not to extend to the corporate or other members or liberties of the cinque ports or two ancient towns; but the justices of and for each of the principal cinque ports and two ancient towns, and not as hereinbefore disqualified from acting, and none other, shall act within and for the same. *Id. s.* 8.

Adjournment of licensing meeting.] "It shall be lawful for the justices acting at the general annual licensing meeting, and they are hereby required, to continue such meeting by adjournment to such day or days, and to such place or places within the division or place for which such meeting shall be holden as such justices may deem most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such licence: provided nevertheless, that the adjourned meeting to be holden next after such general annual licensing meeting, shall not be so holden in or upon any of the five days next ensuing that on which such general annual licensing meeting shall have been holden as aforesaid; and that every adjournment of the said general annual licensing meeting shall be holden within the month of *March* in the counties of *Middlesex* and *Surrey*, and of *August* or *September* in every other county." *Id. s.* 3.

Sessions for the transfer of licence.] The justices assembled at the general annual licensing meeting, "shall appoint not less than four nor more than eight special sessions, to be holden in the division or place for which each such meeting shall be holden in the year next ensuing such general annual licensing meeting, at periods as near as may be equally distant; at which special session it shall be lawful for the justices then and there assembled, in the case and in the manner, and for

defiled by some other person unknown :] against the form of the statute in such case made and provided. And you the said keeper, &c.

Abduction of a girl under sixteen years of age.] Unlawfully taking, or causing to be taken "any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her:" misdemeanor; fine or imprisonment, or both. 9 *G.* 4, *c.* 31, *s.* 20. And where the consent of the parents was obtained by misrepresentation and fraud, the party having at the time an intent to debauch the girl, Gurney, B. held it to be a case within the act. *R.* v. *Hopkins*, 1 *Car.* & *M.* 254. In one case, Parke, B. ruled that a mere decoying or enticing a girl to go away voluntarily, though by fraudulent pretences, would not amount to the offence contemplated by the statute. *R.* v. *Meadows*, 1 *Car.* & *K.* 399. But in a subsequent case, where it appeared that the girl actually proposed to the man to elope with him, and he, in pursuance of it, went to her father's house at night, placed a ladder against a window, and held it whilst she descended, and both of them then eloped: Atcherley, Serj. held this to be a case within this section; and Tindal, C. J., to whom he afterwards mentioned it, was of the same opinion. *R.* v. *Robins*, 1 *Car.* & *K.* 456. The statute 3 H. 7, c. 2, and 4 & 5 Ph. & M. c. 8, upon the subject of abduction, have been repealed by 9 *G.* 4, *c.* 31, *s.* 1.

Commitment:—*For that he the said A. B. on —— at —— unlawfully did take one C. D. out of the possession and against the will of one J. D. her father* [or as the case may be,] *she the said C. D. then and there being an unmarried girl, under the age of sixteen years, to wit, of the age of —— years: against the form of the statute in such case made and provided. And you the said keeper*, &c.

ABORTION.

"Whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing; or shall unlawfully use any instrument or other means whatsoever, with the like intent:" felony, transportation for life, or for not less than fifteen years, or imprisonment [with or without hard labour, s. 7,] for not more than three years. 1 *Vict. c.* 85,

s. 6. The stat. 9 G. 4, c. 31, s. 13, upon this subject, is repealed: and the distinction there made between women quick with child, and those pregnant but not quick with child, is now abolished. *See Arch. Cr. St.* 18, 37, *and note.* It is immaterial, whether this be done with the consent of the woman or not; or whether in fact she be pregnant at all at the time, or not, *see Arch. Cr. St.* 38, 39, although this was formerly otherwise. *R.* v. *Scudder, Ry.* & *M.* 216. Formerly, where the woman was not quick with child, it was immaterial what was administered, provided it was administered with intent to procure miscarriage; *R.* v. *Coe,* 6 *Car.* & *P.* 403; but now the article administered must be proved to be either poison or "other noxious thing." To be administered, also, it seems that the poison or other thing must be actually taken into the stomach of the woman; *see R.* v. *Cadman, Ry.* & *M.* 114. *R.* v. *Harley,* 4 *Car.* & *P.* 369, *per Park, J.*; but an attempt to administer it, would probably be deemed a misdemeanor.

Commitment for administering drugs: *on* —— *at* —— *did unlawfully and feloniously administer to one C. D. and did then and there cause to be taken by her, one ounce weight of a certain poison* [or *noxious thing*] *called* ——, *with intent in so doing then and there to procure the miscarriage of the said C. D.: against the form of the statute in such case made and provided. And you the said keeper,* &c.

Commitment for using instruments, &c.: *on* —— *at* —— *did* [*use a certain instrument called a* ——, stating how, or if other means have been used, state them,] *with intent,* &c. as above.

ABUSING A GIRL.

See "*Carnally knowing a girl.*"

ACCESSORY AND PRINCIPAL.

Principal.] He who actually commits the offence, is said to be principal in the first degree; he who is present, aiding and abetting him in doing it, is said to be principal in the second degree. *See R.* v. *Boyce,* 4 *Burr.* 2073. Both how-

ever are equally guilty. And so immaterial is the distinction considered, in practice, that if a man be indicted as principal in the first degree, proof that he was present aiding and abetting another in committing the offence, although his was not the hand that actually did it, will support the indictment; *see R.* v. *Crisham, Car.* & *M.* 187; and on the other hand, if he be indicted as principal in the second degree, proof that he was not only present, but committed the offence with his own hand, will support the indictment. And persons present at the commission of an offence, are said to be aiding and abetting the party actually committing it, if they be confederated or engaged with him in a common design, of which the offence is a part, *R.* v. *Tattersall,* 1 *Russ.* 22. *R.* v. *Standley, R.* & *Ry.* 305. *R.* v. *Bowen, Car.* & *M.* 149, *and see R.* v. *Hornby et al.* 1 *Car.* & *K.* 305, *cor. Coltman J.*, or if by their presence they encourage him in the commission of it. *R.* v. *Murphy,* 6 *Car.* & *P.* 103. So, a person is said to be present aiding and abetting, who, being engaged in the same design with the person who actually commits the offence, although not actually present at the commission of it, is yet at such a convenient distance as to be able to come to the immediate assistance of his associate, if required, or to watch to prevent surprise, or the like. *See Fost.* 350—355. *R.* v. *Goggerly and Whitford, R.* & *Ry.* 343. And where a person was waiting outside of a house, to receive goods which his confederate was stealing within, he was holden to be a principal in the theft. *R.* v. *Owen, Ry.* & *M.* 96. So, persons present, aiding and abetting in a part of the offence, may, if the offence be completed by their confederate, be indicted as principals: and therefore, where two persons with their umbrella, screened a third whilst he was breaking into a dwelling-house in the day time, and then went away, and were not seen near the place whilst the third party was committing a larceny within the house, Gaselee, J. and Gurney, B., held that they were principals as to the whole offence, namely, the breaking and entering the dwelling-house, and stealing therein. *R.* v. *Jordan et al.*, 7 *Car.* & *P.* 432.

But if a man be at such a distance from the place where the offence is committed, that he could not assist in it if required, he cannot be deemed a principal; and therefore it was holden, that going towards the place where a larceny was to be committed, for the purpose of assisting in carrying off the property and assisting accordingly, did not make the party a principal in the larceny, where it appeared that he was at such a distance at the time of the felonious taking, that he could not have assisted in it. *R.* v. *Kelly, R.* & *Ry.* 421. So, where persons, having stolen goods from a warehouse, carried them along the street for about thirty yards, and then fetched the prisoner, who was apprised of the robbery, but not at all acting in it, and he assisted in carrying away the property;

it was holden that he was not a principal but accessory merely. *R.* v. *King*, *R.* & *Ry.* 332. So, where several persons were out for the purpose of committing a felony, but, upon an alarm, ran different ways, and one of them, to avoid being taken, wounded a man who was pursuing him: it was holden that the others could not be deemed principals in this offence. *R.* v. *White*, *R.* & *Ry.* 99. So, where two persons were riding their horses violently along the road, seemingly racing, and the first of them passed a man on horseback without injuring him, but the last rode against him, threw him, and he was killed: Patteson, J. held that the first of the two could not be deemed a principal in the homicide. *R.* v. *Martin et al.*, 6 *Car.* & *P.* 396.

The commitment of a principal in the second degree, may either be in the ordinary form, as a principal in the first degree; or if the principal in the first degree be committed with him, then after describing the offence of the principal in the first degree, the offence of the abettor may be described in the same warrant, thus: *And that the said C. D. feloniously was then and there present, feloniously aiding, abetting and assisting the said A. B. to do and commit the said felony. And you the said keeper*, &c.

Accessory before the fact.] An accessory before the fact to a felony, is one who counsels, incites, moves, procures, hires or commands another to commit it, but is not himself present aiding or abetting in the commission of it. *R.* v. *Gordon*, 1 *Leach*, 515, *East*, *Pl. C.* 352; and *see R.* v. *Tuckwell et al.*, 1 *Car.* & *M.* 215. There cannot consequently be an accessory before the fact to manslaughter; for that offence, in its nature, cannot be premeditated. 1 *Hale*, 616. The doctrine as to accessories, also, is confined entirely to felonies; for in treason and misdemeanors, those who, by counsel or incitement, &c. would be accessory before the fact in felony, are deemed principals, and prosecuted and punished accordingly. *See R.* v. *Clayton et al.*, 1 *Car.* & *K.* 128. It is not necessary in order to constitute the offence of accessory, that there should be any direct communication between him and the principal; the procurement may be through the intervention of an agent. *R.* v. *Cooper*, 5 *Car.* & *P.* 534. And if managed through an agent, it is not necessary that the principal should be named by the accessory; if the latter desire the agent to procure some person to commit the offence, without naming any, and the agent accordingly procure a person, wholly unknown to the accessory, to commit it, it will be sufficient to constitute the offence of accessory before the fact. *Id.* If the principal felon be unknown, the warrant of commitment of the accessory should be accordingly; and if it afterwards turn out that he is known,

or even was so at the time, this will not affect the validity of the warrant. But if an indictment against an accessory before the fact, state the principal to be unknown, and it turn out in evidence that he is known, this will be a fatal variance, and the defendant must be acquitted. *R.* v. *Walker*, 3 *Camp.* 264. *See R.* v. *Bush*, *R.* & *Ry.* 372.

The accessory before the fact may be tried either with the principal or after his conviction, or he may be tried as for a substantive felony, whether the principal have been convicted or be amenable to justice or not. 7 *G.* 4, *c.* 64, *s.* 9. He is usually punishable in the same manner as a principal; but this of course depends upon the statute creating or punishing the offence. He is so punishable in all offences within stat. 7 & 8 G. 4, c. 29, (the Larceny Act,) by sect. 61; in all offences within stat. 7 & 8 G. 4, c. 30, (Malicious Injuries,) by sect. 26; in all offences against stat. 11 G. 4 & 1 W. 4, c. 66, (the Forgery Act,) by sect. 25; and in all offences against stat. 2 W. 4, c. 34, (Coin,) by sect. 18. In some cases, however, a less punishment is assigned to him.

It may be necessary to add, that a man cannot be committed or indicted as accessory before the fact to a felony, unless it be proved that the felony has been actually committed. But soliciting or inciting a person to commit a felony, although the felony be not afterwards in fact committed, is a misdemeanor at common law, *R.* v. *Higgins*, 2 *East*, 5, punishable with fine or imprisonment, or both, and the party may be committed and indicted for it.

Commitment with principal:—After describing the offence of the principal, state that of the accessory thus: "*And that the said C. D., before the said felony was so committed as aforesaid, did feloniously* [*and maliciously*] *incite, move, procure, counsel, and command the said A. B. to do and commit the said felony. And you the said keeper,*" &c.

Commitment without the principal:—"*For that one* [*or some person unknown*] *on* —— *at* ——, *did feloniously,*" &c., describing the offence as in a commitment of the principal, "*and that the said C. D., before the said felony was so committed, did feloniously and maliciously incite, move, procure, counsel and command the said* [*A. B.* or *person unknown*] *to do and commit the said felony. And you the said keeper,*" &c.

Accessory after the fact.] After a felony has been committed, if any person receive, harbour, or assist the principal felon, knowing him to have committed the felony, he is deemed an accessory after the fact. And this extends as well to the offence of manslaughter, as to other felonies. *R.* v. *Greenacre*, 8 *Car.* & *P.* 35. But it must be considered as having reference to

felony only; the same receipt, &c., which in felony will make a man accessory after the fact, will, in treason, make the party a principal traitor, 1 *Hale*, 238, but in misdemeanors is not punishable at all. 1 *Hale*, 613.

An accessory after the fact to felony, may be tried either in the county where he has been accessory, or in that in which the original felony was committed. 7 *G.* 4, *c.* 64, *s.* 10. He may be tried either with the principal, or after the principal has been convicted; it is not necessary however that the principal should be attainted, to enable the prosecutor to proceed against the accessory after the fact. *Id. s.* 11. The offence is a felony; but is punishable with much less severity than that of the principal or the accessory before the fact. In felonies within stat. 7 & 8 G. 4, c. 29, (the Larceny Act,) accessories after the fact are punishable with imprisonment, with or without hard labour, for any term not exceeding two years, by sect. 61; and the same in felonies, within stat. 7 & 8 G. 4, c. 30, (Malicious injuries,) by sect. 26; in felonies within stat. 9 G. 4, c. 31, (Offences against the Person,) by sect. 31; in felonies within stat. 11 G. 4 & 1 W. 4, c. 66, (Forgery,) by sect. 25; and in felonies within stat. 2 W. 4, c. 32, (Coin,) by sect. 18.

Commitment with the principal:—After describing the offence of the principal, state that of the accessory thus:—"*And that the said C. D. well knowing the said A. B. to have committed the felony aforesaid, did afterwards on* ——, *at* ——, *feloniously receive, harbour, and maintain the said A. B. And you the said keeper,*" &c.

Commitment without the principal:—"*For that one A. B.* [or *some person unknown*] *on* ——, *at* ——, *did feloniously,*" &c., describing the offence, as in a commitment of the principal; "*And that the said C. D., well knowing the said A. B. to have committed the felony aforesaid, did afterwards on* ——, *at* ——, *feloniously receive, harbour, and maintain the said A. B. And you the said keeper,*" &c.

ACCUSING OF CRIME.

Threatening to accuse, &c., with intent to extort.] If any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing accusing or threatening to accuse any person of any crime punishable by law with death, transportation, or pillory, or of any assault with intent to com-

mit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime as hereinafter defined," [*i. e.* "buggery, committed either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise, or threat offered or made to any person, whereby to move or induce such person to commit or permit the said abominable crime," *sect.* 9,] "with a view or intent to extort or gain from such person any chattel, money, or valuable security:"—felony, transportation for life, or not less than seven years, or imprisonment with or without hard labour for not more than four years. 7 & 8 *G.* 4, *c.* 29, *s.* 8. *Vide post, tit. Letter, Threatening.*

To constitute an offence within this statute, there must be an accusation or threat to accuse; and therefore where a man was already indicted for a rape, and another person, not connected with the prosecution, threatened him that if he did not give him 30*l.* he would hire witnesses to prove him guilty: this was holden not to be a threat to accuse, within the meaning of the statute; the accusation had been already made, and this was at most a threat to support it by evidence. *R.* v. *Joseph Gill, cor. Bayley, J., Sum. Ass. York*, 1829. If the offence consist of a threat to accuse, it must be proved to have been made use of to the party threatened, *See R.* v. *Dunkeley et al., Ry.* & *M.* 90, or, at least, if made use of to a third person, it must appear that it was so done, with intent that he should mention it to the party threatened. *See Dict. by the Judges in R.* v. *Paddle, R.* & *Ry.* 484. The intent to extort money, &c., may either be expressed, or may be implied from the accusation or threat itself, or from other circumstances. Where the threat was by a letter, sent to the prosecutor by post, it was holden that the offender might be indicted for it in the county where it was delivered to the prosecutor; *R.* v. *Esser*, 2 *East, P. C.* 1125. *R.* v. *Girdwood, Id.* 1120; in other cases, the party should be prosecuted in the county, &c., in which the accusation is made or threat used.

Commitment for a verbal accusation or threat:—*On* ——, *at* ——, *feloniously did* [*threaten the said C. D. to*] *accuse him the said C. D. of having* [*attempted and endeavoured to commit a rape upon Ann, the wife of the said A. B.*, or as the case may be,] *with a view and intent thereby to extort and gain money* [chattel, money, or valuable security] *from the said C. D., against the form of the statute in such case made and provided. And you the said keeper*, &c.

Commitment for sending a letter, accusing or threatening to accuse:—" *On* ——, *at* ——, *knowingly and feloniously did*

about to be licensed under this act), from acting on any of the occasions aforesaid, by reason of the legal estate in such house being vested in him as trustee for any person or persons or for any charitable or public use or purpose whatsoever." *Id. s.* 6.

"Whenever, at any of the meetings to be holden as aforesaid for any liberty, county of a city, county of a town, city, or town corporate, there shall not be present at least two justices acting in and for any such liberty, county of a city, county of a town, city, or town corporate, who are not disqualified,—it shall be lawful for the justices acting in and for the county or counties adjoining to such liberty, county of a city, county of a town, city, or town corporate, and not disqualified from acting, to act within such liberty or place, and with the justice or justices thereof (not as hereinbefore disqualified) who shall be present at any such meeting as aforesaid, for the purpose of granting or transferring licences under, or of hearing complaints as to offences against, this act; any law, custom, or usage to the contrary notwithstanding." *Id. s.* 7. But this is not to extend to the corporate or other members or liberties of the cinque ports or two ancient towns; but the justices of and for each of the principal cinque ports and two ancient towns, and not as hereinbefore disqualified from acting, and none other, shall act within and for the same. *Id. s.* 8.

Adjournment of licensing meeting.] "It shall be lawful for the justices acting at the general annual licensing meeting, and they are hereby required, to continue such meeting by adjournment to such day or days, and to such place or places within the division or place for which such meeting shall be holden as such justices may deem most convenient and sufficient for enabling persons keeping inns within such division or place to apply for such licence: provided nevertheless, that the adjourned meeting to be holden next after such general annual licensing meeting, shall not be so holden in or upon any of the five days next ensuing that on which such general annual licensing meeting shall have been holden as aforesaid; and that every adjournment of the said general annual licensing meeting shall be holden within the month of *March* in the counties of *Middlesex* and *Surrey*, and of *August* or *September* in every other county." *Id. s.* 3.

Sessions for the transfer of licence.] The justices assembled at the general annual licensing meeting, "shall appoint not less than four nor more than eight special sessions, to be holden in the division or place for which each such meeting shall be holden in the year next ensuing such general annual licensing meeting, at periods as near as may be equally distant; at which special session it shall be lawful for the justices then and there assembled, in the case and in the manner, and for

the time hereinafter directed, to license such persons intending to keep inns theretofore kept by other persons being about to remove from such inns, as the said justices shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper persons, under the provisions hereinafter enacted, to be licensed to sell exciseable liquors by retail, to be drunk or consumed on the premises." *Id. s.* 4.

And if it be desired to transfer the licence, at a time when the special sessions are not holden, then, "at any petty session of justices of the peace holden in and for any division of a county or riding, and in any hundred of every county not being within such division, and in every liberty, city, town, or place within which any inn, alehouse, or victualling house shall be situated, and for which the said justices shall be acting, it shall be lawful, (in those cases where justices of the peace assembled at a special session are empowered by stat. 9 Geo. 4, c. 61, to transfer or grant licences, before the expiration thereof, to sell exciseable liquors by retail in the same house or premises in respect of which any person had been theretofore duly licensed,) for the majority of the justices then present, upon application made to them at any such petty session, by indorsement under their hands and seals on any licence which shall have been granted pursuant to the provisions of the said act at any general licensing meeting, or at any adjournment thereof, to authorize (if they shall deem it proper so to do, after examining upon oath all necessary parties) any person not disqualified by the said act, to whom it shall be proposed at the time of such application to transfer or grant any such licence, to use, exercise and carry on the business of a licensed victualler at the same house and on the same premises, and there to sell such exciseable liquors as might theretofore have been lawfully sold and retailed therein; and thereupon it shall be lawful for the officer of excise empowered to transfer licences, by indorsement on the excise licences required to be transferred, to give the like authority to the persons so authorized by the magistrate or justices; and the authority so granted shall continue and be in force until the then next ensuing special session which shall be holden for the division, hundred, liberty, city, town, or place within which such house and premises shall be situated, and no longer; at which special session the justices then and there assembled, upon application made to them pursuant to the said act, touching any transfer or grant of licence to the party or parties to whom such authority shall have been so given at petty sessions as aforesaid, shall hear and dispose of such application according to the provisions of the said act. 5 & 6 Vict. c. 44, s. 1. This however is not to extend to the metropolitan districts, except the borough of Southwark; but the application in such a case shall be made to one of the police magistrates." *Id.*

"And whenever it shall be proved to the satisfaction of any such magistrate or justices at petty session, upon any application made as aforesaid, that any licence granted pursuant to stat. 9 G. 4, c. 61, has been lost or mislaid, the said magistrate or justices may receive a copy of such licence, certified to be a true copy under the hand of the clerk to the licensing justices by whom the said licence shall have been granted, and to make such indorsement thereon as he or they might make under the provisions of this act upon the original licence; and such indorsement upon the copy so certified shall be as valid and effectual as if the same had been made upon the said licence." *Id. s.* 2.

"And for every such certified copy, and every such indorsement, a fee of 2*s.* 6*d.* may be demanded." *Id. s.* 3.

"No justice of the peace shall act upon any application which shall be so made at petty sessions as aforesaid, who now is or shall be disqualified by law from acting in or being present at any general annual licensing meeting, or any adjournment thereof, or at any special session for granting or transferring licences to sell exciseable liquors; and that every justice who, being so disqualified, shall wilfully offend against this provision, shall be liable to the same penalty and proceedings for the recovery thereof as are specified and directed by the said act of 9 G. 4, c. 61. *Id. s.* 4.

The like, in case of death, change of occupancy, &c.] Also, "if any person duly licensed under this act, shall (before the expiration of such licence) die, or shall be, by sickness, or other infirmity, rendered incapable of keeping an inn, or shall become bankrupt, or shall take the benefit of any act for the relief of insolvent debtors; or if any person so licensed, or the heirs, executors, administrators, or assigns of any person so licensed, shall remove from or yield up the possession of the house specified in such licence; or if the occupier of any such house, being about to quit the same, shall have wilfully omitted, or shall have neglected to apply at the general annual licensing meeting, or at any adjournment thereof, for a licence to continue to sell exciseable liquors by retail, to be drunk or consumed in such house; or if any house, being kept as an inn by any person duly licensed as aforesaid, shall be or be about to be pulled down or occupied under the provisions of any act for the improvement of the highways or for any other public purpose, or shall be, by fire, tempest, or other unforeseen and unavoidable calamity, rendered unfit for the reception of travellers, and for the other legal purposes of an inn: it shall be lawful for the justices assembled as aforesaid at a special session, holden under the authority of this act, for the division or place in which the house so kept or having been kept shall be situate, in any one of the above-mentioned cases,

and in such cases only, to grant to the heirs, executors, or administrators, of the person so dying, or to the assigns of such person becoming incapable of keeping an inn, or to the assignee or assignees of such bankrupt or insolvent, or to any new tenant or occupier of any house having so become unoccupied, or to any person to whom such heirs, executors, administrators or assigns shall by sale or otherwise have *bonâ fide* conveyed or otherwise made over his or their interest in the occupation and keeping of such house,—a licence to sell exciseable liquors by retail, to be drunk or consumed in such house, or the premises thereunto belonging; or to grant to the person whose house shall as aforesaid have been or shall be about to be pulled down or occupied for the improvement of the highways, or for any other public purpose, or have become unfit for the reception of travellers or for the other legal purposes of an inn, and who shall open and keep as an inn some other fit and convenient house,—a licence to sell exciseable liquors by retail, to be drunk or consumed therein: provided always, that every such licence shall continue in force only from the day on which it shall be granted, until the fifth day of *April* or the tenth day of *October* then next ensuing, as the case may be." 9 *G.* 4, *c.* 61, *s.* 14.

Notice of adjourned or special session.] "Whenever the justices shall have ordered any such adjournment of the general annual licensing meeting, or shall have appointed such special sessions as aforesaid, the day, hour, and place for holding every such adjourned meeting, and every such special session, shall be appointed by precept of the majority of the said justices, directed to the high constable, requiring notices, similar in form to those given at the general annual licensing meeting, to be affixed on the door of the church or chapel, or on some other public and conspicuous place, and to be served upon the same parties." *Id. s.* 5.

Who may be licensed.] The statute directs the licences to be given "to such persons as they, the said justices, shall, in the execution of the powers herein contained, and in the exercise of their discretion, deem fit and proper." *Id. s.* 1, *ante*, p. 19. But "no sheriff's officer, or officer executing the legal process of any court of justice in any county or place, shall be capable of receiving or using any licence under this act; and that every licence granted or transferred to any person exercising any such office, shall be void to all intents and purposes." *Id. s.* 16.

Notice of intention to apply.] "Every person intending to apply for a licence to sell exciseable liquor by retail, to be drunk or consumed in any house not theretofore kept as an inn, shall

affix or cause to be affixed a notice on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate, and, where there shall be no church or chapel, on some other public and conspicuous place within such parish or place, on three several *Sundays* between the first day of *January* and the last day of *February*, in the counties of *Middlesex* and *Surrey*, and elsewhere between the first day of *June* and the last day of *July*, at some time between the hours of ten in the forenoon, and of four in the afternoon, and shall serve a copy of such notice upon one of the overseers of the poor, and upon one of the constables or other peace officers of the said parish or place, within the month of *February* in the counties of *Middlesex* and *Surrey*, and elsewhere within the month of *July*, prior to the general annual licensing meeting; and every such notice, and the copies thereof, shall be written in a fair and legible hand, or printed, and shall be according to the form in the schedule hereunto annexed marked A, and shall be signed by the party intending to make such application, or by his agent thereunto authorized, and shall set forth the situation of the house in a true and particular manner, and the christian and surname of the party applying, together with the place of his residence, and his trade or calling, during the six months previous to the time of serving such notice, and his intention to apply for a licence to sell exciseable liquor by retail, to be drunk or consumed in such house or premises." *Id. s.* 10. The following is the form of the notice:—

To the overseers of the poor, and the constables, of the parish of ——, and to all whom it may concern:

I, A. B. [state the trade or occupation], *now residing at ——, in the parish of ——, in the county of ——, and for six months last past having resided at ——, in the parish of ——*, [or *in the several parishes of ——*], *in the county* [or *in the counties of ——*], *do hereby give notice, that* [if application is intended to be made to a special session, here state the cause for such application] *it is my intention to apply at the general annual licensing meeting*, [or *at the special session*,] *to be holden at ——, on the —— day of —— next ensuing, for a licence to sell exciseable liquors by retail, to be drunk or consumed in the house or premises thereunto belonging, situate at* [here describe the house intended to be opened, specifying the situation of it, the person of whom rented, the present or late occupier, whether kept or used as an inn, alehouse, or victualling-house, within the three years preceding; and if so, by whom and under what sign]; *and which I intend to keep as an inn, alehouse, or victualling-house.*

Given under my hand this —— day of ——, one thousand eight hundred and ——.

N.B.—*A copy of this notice to be served upon one of the overseers of the poor, and upon one of the constables or other peace officers of the parish in which is situate the house intended to be opened.*

The like, for transferring a licence.] "Every person holding a licence under the authority of this act, or his heirs, executors, administrators, or assigns, being desirous to transfer such licence to some other person, and intending to apply at the special session then next ensuing for permission so to do, shall, five days at the least prior to such special sessions, serve a notice of such his intention, upon one of the overseers of the poor, and upon one of the constables or other peace officers of the parish or place in which the house kept by the person so holding such licence is situate; and every such notice shall be written in a fair and legible hand, or printed, and shall be according to the form in the schedule hereunto annexed marked B, and shall be signed by the party intending to make such application, or by his agent thereunto authorized, and shall set forth the christian and surname of the person to whom it is intended that such licence shall be transferred, together with the place of his residence, and his trade or calling, during the six months previous to the time of serving such notice." *Id. s.* 11. The following is the form of the notice:—

To the overseers of the poor, and the constables, of the parish of ——, in the county of ——, and to all whom it may concern:

I, A. B., [or *we, the executors, &c. &c. of the late A. B.*] *victualler, being authorized by virtue of the licence granted to me* [or *him* or *her*] *at the general annual licensing meeting* [or *special session*] *held at ——, on the —— day of ——, one thousand eight hundred and ——, to sell exciseable liquor by retail, to be drunk or consumed in the house or premises thereunto belonging, situate at* [here describe the situation of the house,] *and commonly known by the sign of the ——, do hereby give notice, that it is my* [or *our*] *intention to apply at the special session to be holden at ——, in the county of ——, on the —— day of ——, one thousand eight hundred and ——, for permission to transfer the above-mentioned licence to C. D.*, [state his trade or occupation,] *now residing at ——, in the parish of ——, in the county of ——, and for six months last past having resided at ——,* [or *in the several parishes of ——*] *in the county of ——* [or *counties of ——*,] *that the said C. D. intending to keep as an inn, alehouse or victualling-house, the*

said house so as aforesaid kept by me [or *us*,] *may sell exciseable liquors by retail, to be drunk or consumed in the said house, or premises thereunto belonging.*

Given under my hand this —— day of ——, one thousand eight hundred and ——.

N.B.—*A copy of this notice to be served upon one of the overseers of the poor, and upon one of the constables or other peace officers of the parish in which is situate the house kept by the person whose notice it is.*

The like, in case of death, change of occupancy, &c.] Every person intending to apply, in the case of death, change of occupancy or other contingency, mentioned, *ante*, pp. 23, 24, at any special session "for a licence to sell exciseable liquors by retail, to be drunk or consumed in a house or premises thereunto belonging, in which exciseable liquors shall not have been sold by retail, to be drunk or consumed on the premises, by virtue of a licence granted at the general annual licensing meeting next before such special session, shall, on some one *Sunday* within the six weeks next before such special session, at some time between the hours of ten in the forenoon, and of four in the afternoon, affix or cause to be affixed on the door of such house, and on the door of the church or chapel of the parish or place in which such house shall be situate, and, where there shall be no church or chapel, on some other public and conspicuous place within such parish or place, such and the like notice as is hereinbefore directed to be affixed by every person intending to apply at the general annual licensing meeting for a licence to sell exciseable liquors by retail, to be drunk or consumed in a house not theretofore kept as an inn, and shall in like manner serve copies of the said notice on one of the overseers of the poor, and on one of the constables or other peace officers, of such parish or place." *Id. s.* 14.

Licence, how granted.] "When, (at any of the meetings aforesaid) any question touching the granting, withholding, or transferring any licence, or the fitness of the person applying for such licence, or of the house intended to be kept by such person, shall arise, such question shall be determined by the majority of justices, not disqualified, who shall be present when such question shall arise; and every licence granted under the authority of this act shall be signed by the majority of the justices, not disqualified, who shall be present when such licence shall be granted." *Id. s.* 9.

How, when applicant cannot attend.] "If any person intending to apply at the general annual licensing meeting, or at any

adjournment thereof, or at any special session, for any licence to be granted under the authority of this act, or for the transfer of any such licence, shall be hindered by sickness or infirmity, or by any other reasonable cause, from attending in person at any such meeting, it shall be lawful for the justices there assembled to grant or transfer such licence to such person so hindered from attending, and to deliver the same to any person then present who shall be duly authorized by the person so hindered from attending to receive the same, proof being adduced to the satisfaction of such justices, who are hereby empowered to examine upon oath into the matter of such allegation, that such person is hindered from attending by good and sufficient cause." *Id. s.* 12.

Licence, and how long in force.] "Every licence, which shall be granted under the authority of this act, shall be according to the form in the schedule hereunto annexed (marked C,) and shall be in force in the counties of *Middlesex* and *Surrey* from the fifth day of *April*, and elsewhere from the tenth day of *October*, after the granting thereof, for one whole year thence respectively next ensuing, and no longer; and every licence for the purposes aforesaid, which shall be granted at any other time or place or in any other form than that hereby directed, except as hereinafter excepted, shall not entitle any person to obtain an excise licence for selling exciseable liquors by retail, to be drunk or consumed on the premises of the person licensed, and shall be utterly void to all intents and purposes." *Id. s.* 13. The following is the form of the licence:—

At the general annual licensing meeting, [or *an adjournment of the general annual licensing meeting,* or *at a special petty sessions*] *of Her Majesty's justices of the peace acting for the division* [or *liberty, &c.*, as the case may be] *of —— in the county of ——, holden at ——, on the —— day of ——, in the year one thousand eight hundred and ——, for the purpose of granting licences to persons keeping inns, alehouses, and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed on their premises, we, being —— of Her Majesty's justices of the peace acting for the said county,* [or *liberty, &c. &c.*, as the case may be,] *and being the majority of those assembled at the said session, do hereby authorize and empower A. L., now dwelling at —— in the parish of ——, and keeping* [or *intending to keep*] *an inn, alehouse, or victualling-house at the sign of the ——, in the —— of ——, in the division and county aforesaid, to sell by retail therein, and in the premises thereunto belonging, all such exciseable liquors as the said A. L. shall be licensed and empowered to sell under the au-*

thority and permission of any excise licence,' and to permit all such liquors to be drunk or consumed in his said house or in the premises thereunto belonging: provided that he [or *she*] *do not fraudulently dilute or adulterate the same, or sell the same knowing them to have been fraudulently diluted or adulterated; and do not use in selling thereof any weights or measures that are not of the legal standard; and do not wilfully or knowingly permit drunkenness or other disorderly conduct in his* [or *her*] *house or premises; and do not knowingly suffer any unlawful games or any gaming whatsoever therein: and do not knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein; and do not keep open his* [or *her*] *house, except for the reception of travellers, nor permit or suffer any beer or other exciseable liquor to be conveyed from or out of his* [or *her*] *premises, during the usual hours of the morning and afternoon divine service in the church or chapel of the parish or place in which his* [or *her*] *house is situated, on Sundays, Christmas-day, or Good Friday, but do maintain good order and rule therein; and this licence shall continue in force from the —— day of —— next, until the —— day of —— then next ensuing, and no longer: provided that the said A. L. shall not in the meantime become a sheriff's officer, or officer executing the process of any court of justice, in either of which cases this licence shall be void. Given under our hands and seals on the day and at the place first above written.*

Fees.] The only fees payable, are paid to the clerk of the justices, and amount to 7*s.* 6*d.*: namely, 5*s.* for the licence, 1*s.* 6*d.* for the precepts, and 1*s.* for the petty constable; and if the clerk of the justices demand or receive more, he is liable to a penalty of 5*l.* *Id. s.* 15.

No excise licence, until justices' licence first obtained.] "No licence for the sale of any exciseable liquors by retail, to be drunk or consumed on the premises of the person licensed, shall be granted by the commissioners of excise, or by any officer of excise, to any person whatsoever, unless such person shall have previously obtained from the justices a licence under this act, and which said licence of such justices shall be retained by such person after being produced to the commissioners or officers of excise; and every licence granted by the commissioners of excise, or by any officer of excise, contrary to this provision, shall be null and void to all intents and purposes." *Id. s.* 17.

Selling without licence.] "Every person who shall sell, barter, exchange, or for valuable consideration otherwise dispose of, any exciseable liquor by retail, to be drunk or consumed in

his house or premises, or shall permit or suffer any exciseable liquor to be sold, bartered, exchanged, or otherwise disposed of for valuable consideration, by retail, to be drunk or consumed in his house or premises, without being duly licensed so to do; and every person being duly licensed, who shall sell, barter, exchange, or for valuable consideration otherwise dispose of, or shall permit or suffer to be sold, bartered, exchanged or otherwise disposed of for valuable consideration, any exciseable liquor, by retail, to be drunk or consumed in his house or premises, not being the house or premises specified in such licence, —shall respectively for every such offence, on conviction before one justice, forfeit and pay any sum not exceeding twenty nor less than five pounds, together with the costs of the conviction: provided always, that no penalty for such sale, barter, exchange, or other disposal of any such liquor by retail without licence, shall be incurred by the heirs, executors, administrators, or assigns of any persons licensed under this act, who shall die, become bankrupt, or take the benefit of any act for the relief of insolvent debtors, before the expiration of his licence, so as such sale, barter, exchange, or other disposal of such liquor be made in the house or premises specified in such licence, and take place prior to the special sessions then next ensuing, unless such special session shall be holden within fourteen days next after the death, bankruptcy, or insolvency of the said person, and in any such case to the special session [illegible] next after such special session aforesaid." *Id. s.* 18.

Conviction for selling without licence; as *post*, p. 37:—"*For that the said A. B., on* ——, *at* ——, *a certain quantity of a certain exciseable liquor, to wit, one quart of ale, did sell,* [or *did permit and suffer to be sold,* or as the case may be] *by retail, to be drunk and consumed in the house and premises of the said A. B., at* —— *aforesaid, he the said A. B. not being then duly licensed so to do, and not being then the heir, executor, administrator or assignee of any person duly licensed so to do, against the form of the statute in such case made and provided. Whereby,*" &c.

Conviction for selling in other than licensed premises: as *post*, p. 37:—"*For that the said A. B., on* ——, *at* ——, *being then and there a person duly licensed to sell exciseable liquors, to be drunk and consumed in his house, situate at* [here describe it] *or in the premises thereunto belonging, as in his said licence is mentioned and described, a certain quantity of a certain exciseable liquor, to wit, one quart of ale, did sell* [or *did permit and suffer to be sold,* or as the case may be] *by retail, to be drunk and consumed in a certain other house of him, the said A. B.,*

situate at —— aforesaid, the said last-mentioned house not being the house or premises in the said licence specified or any premises thereunto belonging, and the said A. B., not being then the heir, executor, administrator, or assignee of any person duly licensed to sell exciseable liquors, to be drunk or consumed in the said house, situate at —— as last aforesaid; against the form of the statute in such case made and provided. Whereby," &c.

Not selling by standard measure.] "Every person hereby licensed to sell exciseable liquors by retail, to be drunk or consumed in his house or premises, shall, if required, sell or otherwise dispose of all such liquors by retail therein (except in quantities less than a half pint) by the gallon, quart, pint, or half pint measure, sized according to the standard, and shall also, if required by any guest or customer purchasing such liquor, retail the same in a vessel sized according to such standard; and in default thereof, he shall for every such offence forfeit the illegal measure, and pay a sum not exceeding forty shillings, together with the costs of the conviction to be recovered within thirty days next after that on which such offence was committed, before any one justice; and such penalty shall be over and above all penalties to which the offender may be liable under any other act." *Id. s.* 19.

Conviction as *post*, p. 37:—"*For that A. B., on ——, at ——, being then a person duly licensed to sell exciseable liquors, by retail, to be drunk and consumed in his house or premises, did sell a certain quantity of a certain exciseable liquor, to wit, three quarts and one pint of ale, by retail, in his said house and premises, to one C. D., as and for one gallon of ale; and although the said A. B. was then and there required by the said C. D. to sell the same to him the said C. D. by a gallon measure sized according to the standard, yet the said A. B. then and there refused so to do, and therein then and there made default, and on the contrary thereof he the said A. B. did then and there sell the said ale to the said C. D. according to a measure much less, to wit, one pint less, than the standard gallon; against the form of the statute in such case made and provided. Whereby,"* &c.

Not closing house in case of riot, &c.] "It shall be lawful for any two justices acting for any county or place, where any riot or tumult shall happen or be expected to take place, to order or direct that every person licensed, under this act, and keeping any house situate within their respective jurisdictions in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which the said justices shall order or direct; and every such

person who shall keep open his house at or after any hour at which such justices shall have so ordered or directed such house to be closed, shall be taken and deemed to have not maintained good order and rule therein." *Id. s.* 20. *See post*, p. 34.

Offences against the licence.] "Every person licensed under this act, who shall be convicted before two justices acting in and for the division or place in which shall be situate the house kept or theretofore kept by such person, of any offence against the tenor of the licence to him granted, shall, unless proof be adduced to the satisfaction of such justices that such person had been theretofore convicted before two justices, within the space of the three years next preceding, of some offence against the tenor of the licence subsisting at the time when such last-mentioned offence was committed, be adjudged by such justices to be guilty of a first offence against the provisions of this act relative to the maintenance of good order and rule, and to forfeit and pay any sum not exceeding five pounds, together with the costs of the conviction; but if proof shall be adduced to the satisfaction of such justices, that such person had been previously convicted before two justices, within the space of the three years next preceding, of one offence only against the tenor of the licence subsisting at the time when such last-mentioned offence was committed, such person shall be adjudged by such justices to be guilty of a second offence against the provisions of this act as aforesaid, and to forfeit and pay any sum not exceeding ten pounds, together with the costs of the conviction." *Id. s.* 21.

Upon referring to the licence, *ante*, p. 28, the reader will perceive that there are seven offences prohibited by it. The following is a list of them; and I have annexed to each, the form of stating it in a conviction:—

1. That he do not fraudulently dilute or adulterate the same, (exciseable liquors,) or sell the same, knowing them to have been fraudulently diluted or adulterated.

Conviction, as *post*, p. 37:—"*For that he the said A. B., on* ——, *at* ——, *being then and there a person licensed to sell exciseable liquors by retail, under and by virtue of a certain act of parliament made and passed in the ninth year of the reign of our late sovereign lord King William the Fourth, intituled* '*An act to regulate the granting of licences to keepers of inns, alehouses, and victualling-houses in England*;'* *did then and there fraudulently dilute and adulterate a certain quantity of a certain exciseable liquor, to wit, ten gallons of rum, then in the possession of him the said A. B. for sale, by mixing a*

certain quantity, to wit, two gallons of water with the same, [or *did then and there sell to one C. D., a certain quantity of a certain exciseable liquor, to wit, ten gallons of rum, before then fraudulently diluted and adulterated, by some person unknown, he the said A. B., at the time he so sold the same as aforesaid, well knowing that the same were so fraudulently diluted and adulterated as aforesaid:*] *against the tenor of the licence so to him the said A. B. granted as aforesaid, and against the form of the statute in such case made and provided. Whereby,*" &c.

2. That he do not use, in selling thereof, any weights or measures that are not of the legal standard.

Conviction, same as the last, to the asterisk,* and then thus: "*did then and there use in the sale of a certain quantity of a certain exciseable liquor, to wit, one quart of ale, by him to one C. D. then and there sold, a certain measure as and for a quart, which was not then of the legal standard, and which then and there contained much less, to wit, one quarter of a pint less, than a quart measure of the legal standard: against the tenor of the licence so to him the said A. B. granted as aforesaid, and against the form of the statute in such case made and provided. Whereby,*" &c.

3. That he do not wilfully or knowingly permit drunkenness or other disorderly conduct in his house or premises.

Conviction, same as the first of the above forms, to the asterisk,* and then thus: "*did then and there wilfully and knowingly permit and suffer one C. D. to become drunk in the house and premises of him the said A. B., and to be and continue there drunk for a long space of time, to wit, for the space of one hour,* [or as the case may be:] *against the tenor of the licence so to him the said A. B. granted as aforesaid, and against the form of the statute in such case made and provided. Whereby,*" &c.

4. That he do not knowingly suffer any unlawful games, or any gaming whatsoever therein.

Conviction, same as the first of the above forms, to the asterisk,* and then thus: "*did then and there knowingly suffer divers persons unknown to play at a certain unlawful game called* ——, [or as the case may be] *in the house and premises of him the said A. B.: against the tenor of the licence so to him the said A. B. granted as aforesaid, and against the form of the statute in such case made and provided. Whereby,*" &c.

Billiards, bagatelle, and games of the like kind, are seemingly no longer "unlawful games," within the meaning of the licence; see 8 & 9 Vict. c. 109, s. 11, and see *post*, *tit.* "Gaming;" but still the party licensed must not allow any gaming whatsoever, even at these games.

5. That he do not knowingly permit or suffer persons of notoriously bad character to assemble and meet together therein.

Conviction, same as the first of the above forms, to the asterisk,* and then thus: "*did then and there knowingly permit and suffer divers persons of notoriously bad character to assemble and meet together in the house and premises of him the said A. B.: against the tenor of the licence so to him the said A. B. granted as aforesaid, and against the form of the statute in such case made and provided. Whereby,*" &c.

6. That he do not open his house, except for the reception of travellers, nor permit or suffer any beer or other excisable liquor to be conveyed from or out of his premises, during the usual hours of the morning or afternoon divine service in the church or chapel of the parish or place in which his house is situate, on Sundays, Christmas Day, or Good Friday.

Conviction, same as the first of the above forms, to the asterisk,* and then thus: "*did then and there on Sunday during the usual hours of the morning divine service in the church of the parish of ——, in which parish the house of the said A. B. was then situate, to wit, at the hour of ——, [open his said house for the reception of persons not being travellers, or permit and suffer a certain quantity of a certain excisable liquor, to wit, one quart of ale, to be conveyed from and out of his said house and premises:] against the tenor of the licence so to him the said A. B. granted as aforesaid, and against the form of the statute in such case made and provided. Whereby,*" &c.

See stat 5 & 6 Vict. c. 44, s. 5, prohibiting the sale of wines, &c., in steam boats, &c., anchored within the metropolitan police district, within the times above mentioned.

7. That he do maintain good order and rule therein.

Conviction, same as the first of the above forms, to the asterisk,* and then thus: "*did not then and there maintain good order and rule in the house of him the said A. B., but on the contrary thereof he the said A. B. did then and there* [here state the particular act or acts complained of and proved:]

against the tenor of the licence to him the said A. B. so granted as aforesaid, and against the form of the statute in such case made and provided. Whereby," &c.

Third offence how punishable.] "But if proof shall be adduced to the satisfaction of such justices, that such person had been previously convicted before two justices within the space of the three years next preceding, of two separate offences against the tenor of the licences subsisting at the times when such last-mentioned offences were committed, it shall be lawful for the said justices, and they are hereby required, to adjourn the further consideration of the charge so made against such person as aforesaid, to the special session to be then next holden under this act for the division or place in which shall be situate the house kept by such person, or to the general annual licensing meeting for the said division or place, if such meeting shall take place before any such special session shall be holden; and such justices shall issue their summons to the person so charged, to appear at such special session, or at such general annual licensing meeting, then and there to answer to the matter of such charge, and shall bind the person who shall make such charge, and any other person who shall have any knowledge of the circumstances thereof, in a sufficient recognizance, to appear at such special session or at such general annual licensing meeting, then and there to prosecute and to give evidence upon such charge; and if proof shall be adduced to the satisfaction of the justices assembled at such special session, or at such general annual licensing meeting, that such person so charged is guilty of the offence with which he is so charged, such person shall be adjudged to be guilty of a third offence against the provisions of this act as aforesaid, and to forfeit and pay any sum not exceeding fifty pounds, together with the costs of the conviction." *Id. s.* 21.

"Provided always, that if at any time before the hearing of any such last-mentioned charge, the justices assembled as aforesaid shall in their discretion think fit to direct that the hearing of such charge shall be adjourned to the general or quarter session of the peace then next ensuing, there to be inquired of by a jury; or if the person so charged shall, in writing, under his hand, request the said justices to direct that the hearing of such charge shall be so adjourned as aforesaid: the said justices are hereby required to direct that the hearing of such charge shall be so adjourned, provided that the person who shall have made such request shall, before such justices so assembled, forthwith enter into a recognizance, with two sufficient sureties, personally to appear at the said general or quarter session, and to try such charge and to abide the judgment of the court thereupon, and to pay such costs as shall

be by the court awarded; and the said justices are hereby required to bind in a recognizance to appear at such general or quarter session as aforesaid, then and there to give evidence against the person so charged, the person who shall make such charge, and any other person who shall have any knowledge of the circumstances thereof; and it shall be lawful for the said court of general or quarter session, to direct a jury then and there duly empanneled to be sworn to inquire of the offence so charged to have been committed, and upon their verdict of 'guilty' to adjudge such person to be guilty of a third offence against the provisions of this act as aforesaid, (and such verdict and adjudication shall be final to all intents and purposes,) and to punish such offender by fine, not exceeding the sum of 100*l.*, or to adjudge the licence granted to and held by or on behalf of such offender to be forfeited and void, or to punish such offender by such fine as aforesaid, and to adjudge such licence to be forfeited and void: and if such licence shall be adjudged to be forfeited and void, it shall thenceforth be void accordingly; and every excise licence for selling any exciseable liquors by retail, then held by or on behalf of such offender, shall also be void; and if the licence of such offender shall be so adjudged to be void, such offender shall, from and after such last mentioned adjudication, be deemed and taken to be incapable of selling exciseable liquors by retail in any inn kept by him for the space of three years, to be computed from the time of such adjudication; and any licence granted to such person during such term shall be void to all intents and purposes: provided also, that the court may, upon sufficient cause shown, adjourn the hearing of such charge to the then next general or quarter session of the peace, when the same shall be finally determined." *Id. s.* 21.

"In every case in which the justices assembled at any special session, or at any general annual licensing meeting, shall direct that the charge against any person licensed under this act shall be adjourned to the general or quarter session, it shall be lawful for such justices, if no other fit and proper person shall appear to prosecute such charge, and to carry on such proceedings as may be necessary to obtain at such session an adjudication thereon, to order that the constable or other peace officer of the parish or place in which shall be situate the house kept by the person so charged, shall carry on all proceedings necessary to obtain such adjudication as aforesaid, and to bind such constable or other peace officer in a sufficient recognizance so to do: and it shall be lawful for the justices before whom such charge shall have been heard, to order the treasurer of the county or place in and for which such justices shall then act, to pay such constable or other peace officer, and to the witness or witnesses on his behalf, such sum or sums of money as to the court shall appear to

be sufficient to reimburse such constable or other peace officer, and such witness or witnesses respectively, the expenses that he or they shall have been severally put to in and about such prosecution; which order the clerk of the peace is hereby directed and required forthwith to make out and to deliver to such constable or other peace officer, or to such witness or witnesses; and the said treasurer is hereby authorized and required, upon sight of such order, forthwith to pay to such constable or other peace officer, or other person authorized to receive the same, such money as aforesaid; and the said treasurer shall be allowed the same in his accounts." *Id. s.* 22.

Conviction.] "Every conviction under this act shall be on the oath or oaths of one or more credible witness or witnesses; and any justice, not as hereinbefore disqualified, and acting in and for the county or place in which the offence complained of shall have been committed, is hereby authorized to administer the same." *Id. s.* 31.

And in order to prevent frivolous and vexatious appeals, be it further enacted, that a conviction in the form or to the effect following, *mutatis mutandis* as the case may be, shall be good and effectual to all intents and purposes whatsoever, without stating the case, or the facts or evidence, in any more particular manner, that is to say,

to wit. } *Be it remembered, that on this —— day of ——, in the year ——, A. B., of ——, was duly convicted before —— of Her Majesty's justices of the peace for the —— of ——, for that* [here state the offence, and the time and place when committed,] *whereby the said A. B. has forfeited the sum of ——, this being adjudged to be the first* [or *second*, or *third*] *offence* [as the case shall happen to be] *against the provisions of an act to regulate the granting of licences to keepers of inns, alehouses, and victualling-houses in England, besides the costs of this conviction, which —— the said justices do hereby assess at the sum of ——, pursuant to the statute in such case made and provided. Given under —— hand and seal, the day and year above written. Id. s.* 32.

The justice shall return the conviction to the next general or quarter sessions; and the certificate of the clerk of the peace of such conviction shall be legal evidence of the same. *Id. s.* 33.

Witnesses, how compelled to appear.] "If any person shall be summoned as a witness to give evidence before any justice, touching any of the matters aforesaid, either on the part of the complainant or of the person accused, and shall neglect or refuse to appear at the time and place for that purpose appointed,

and who shall not make such reasonable excuse for such neglect or refusal as shall be admitted and allowed by such justice, or who appearing shall refuse to be examined on oath or affirmation and give evidence, every such person shall, on conviction before such justice, forfeit and pay for every such offence any sum not exceeding ten pounds." *Id. s.* 23. *See the form of conviction, supra.*

No certiorari.] "No conviction under this act, nor any adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by writ of certiorari or otherwise, into any of Her Majesty's superior courts of record." *Id. s.* 34.

Proceedings for penalties.] "In every case in which, under the authority of this act, any justice shall adjudge that any offender shall pay or cause to be paid any penalty, and such offender shall refuse or neglect forthwith, or within such period as such justice shall appoint, to pay such penalty and any costs which shall have been duly assessed and ascertained by such justice, it shall be lawful for such justice, if he shall think fit, to issue his warrant, and to levy the amount of such penalty and costs, by distress and sale of the goods and chattels of such offender, together with the costs of such distress and sale; and in every such case such offender, if in custody at the time that such warrant shall be so issued, shall be forthwith discharged; but if it shall appear to such justice, that the goods and chattels of such offender are not sufficient whereon to levy such distress, together with the costs of such distress and sale, it shall be lawful for such justice to commit the offender to the common gaol or to the house of correction of the county or place for which such justice shall be then acting, for any term not exceeding one calendar month, if the penalty shall not be above 5*l.*: for any term not exceeding three calendar months, if the penalty shall be above 5*l.* and shall not be more than 10*l.*; and for any term not exceeding six calendar months, if the penalty shall be above 10*l.*: provided nevertheless, that whenever such offender shall have been committed to the common gaol or house of correction in consequence of his not having duly paid such penalty and costs, such offender shall, if he pay or cause to be paid to the gaoler or keeper of the house of correction, or to whomsoever such justice shall have appointed, the penalty imposed, and costs, together with all the costs of the apprehension of him, and of the conveyance of him to the said gaol or house of correction, at any time previous to the expiration of the time for which such offender shall so have been committed, be forthwith discharged." *Id. s.* 25.

Penalties, how applied.] "It shall be lawful for any justice, before whom any penalty shall be recovered under the provi-

sions of this act, to award, if he shall think fit, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor, and the remainder to the treasurer of the county or place for which such justice shall then act." *Id. s.* 26.

Defects in commitment.] "No warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and that there be a good and valid conviction to sustain the same." *Id. s.* 34.

Appeal.] "Any person who shall think himself aggrieved by any act of any justice, done in or concerning the execution of this act, may appeal against such act to the next general or quarter sessions of the peace holden for the county or place wherein the cause of such complaint shall have arisen, unless such session shall be holden within twelve days next after such act shall have been done, and in that case to the next subsequent session holden as aforesaid, and not afterwards; provided that such person shall give to such justice notice in writing of his intention to appeal, and of the cause and matter thereof, within five days next after such act shall have been done, and seven days at the least before such session, and shall within such five days enter into a recognizance, with two sufficient sureties, before a justice acting in and for such county or place as aforesaid, conditioned to appear at the said session, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into, shall liberate such person, if in custody for any offence in reference to which the act intended to be appealed against shall have been done." *Id. s.* 27.

The parties aggrieved within the meaning of this appeal clause, are those only who are immediately aggrieved by the act done, and not those who are merely consequentially injured by it; and, therefore, where a licensed publican appealed, because the magistrates had granted a licence to another person who had set up a public-house within a few yards of his house, the court held that he was not a party grieved within the meaning of the act, and could not appeal. *R.* v. *JJ. of Middlesex*, 3 *B.* & *Ad.* 938. But a party may appeal against a refusal by the special sessions to grant him an ale licence; *R.* v. *Deane et al.*, 2 *Q. B.* 96; and if in such a case the refusal be by the justices of a borough, within the Municipal Corporation Act, the appeal must be to the quarter sessions of the county, for the recorder of the borough cannot take cognizance of it. *Id.* In the case of a conviction by two justices, the notice of

appeal must be served upon both. *R.* v. *JJ. of Cheshire*, 9 *Law J.*, 89, *m.*

"The court at such session shall hear and determine the matter of such appeal, and shall make such order therein, with or without costs, as to the said court shall seem meet; and in case the act appealed against shall be the refusal to grant or to transfer any licence, and the judgment under which such act was done be reversed, it shall be lawful for the said court to grant or to transfer such licence in the same manner as if such licence had been granted at the general annual licensing meeting, or had been transferred at a special session; and the judgment of the said court shall be final and conclusive to all intents and purposes; and in case of the dismissal of such appeal, or of the affirmance of the judgment on which such act was done, and which was appealed against, the said court shall adjudge and order the said judgment to be carried into execution, and costs awarded to be paid, and shall, if necessary, issue process for enforcing such order: provided that no justice shall act in the hearing or determination of any appeal to the general or quarter sessions as aforesaid from any act done by him in or concerning the execution of this act." *Id. s.* 27.

"Provided also, that when any cause of complaint shall have arisen within any liberty, county of a city, county of a town, city or town corporate, it shall be lawful for the person who shall think himself so as aforesaid aggrieved, to appeal against any such act as aforesaid, if he shall think fit, to the quarter sessions of the county within or adjoining to which such liberty or place shall be situate, subject to all the provisions hereinbefore contained." *Id. s.* 27.

It is very doubtful, however, whether this portion of the section has not been virtually repealed by the 105th section of the corporation act. *See post, title,* "*Appeal,*" "*Sessions.*"

Witnesses may be bound over.] "When any person shall have given notice of his intention to appeal as aforesaid, and shall have entered into recognizance as hereinbefore directed, it shall be lawful for the justice before whom such recognizance shall have been entered into, to summon any person whose evidence shall appear to him to be material, and to require such person to be bound in recognizance to appear at the said general or quarter session, and to give evidence in such appeal: and in case any such person as aforesaid shall neglect or refuse to obey such summons, or shall refuse to enter into such recognizance, it shall be lawful for such justice as aforesaid to issue his warrant to apprehend such person so neglecting or refusing to obey such summons, and to bring him before such justice, and, if such person shall continue to refuse to enter into such recognizance, to commit him to the common gaol or

house of correction of the county or place for which such justice shall be then acting, there to remain until he shall enter into such recognizance, or shall be otherwise discharged by due course of law." *Id. s.* 28.

Costs.] "In every case where notice of appeal against the judgment of any justice in or concerning the execution of this act shall have been given, and such appeal shall have been dismissed, or the judgment so appealed against shall have been affirmed, or such appeal shall have been abandoned, it shall be lawful for the court, to whom such appeal shall have been made or intended to be made, and such court is hereby required, to adjudge and order that the party, so having appealed or given notice of his intention to appeal, shall pay to the justice to whom such notice shall have been given, or to whomsoever he shall appoint, such sum, by way of costs, as shall in the opinion of such court be sufficient to indemnify such justice from all cost and charge whatsoever, to which such justice may have been put in consequence of his having had served upon him notice of the intention of such party to appeal; and if such party shall refuse or neglect forthwith to pay such sum, it shall be lawful for the said court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid; and in every case in which the judgment so appealed against shall be reversed, it shall be lawful for such court, if it shall think fit, to adjudge and order that the treasurer of the county or place, in and for which such justice whose judgment shall have been so reversed shall have acted, on the occasion when he shall have given such judgment, shall pay to such justice, or to whomsoever he shall appoint, such sum as shall, in the opinion of such court, be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put; and the said treasurer is hereby authorized to pay the same, which shall be allowed to him in his accounts." *Id. s.* 29.

Recovery of penalties against justices.] "Every penalty and forfeiture imposed by this act upon any justice, may be sued for and recovered by action of debt in any of his Majesty's courts of record at *Westminster*; and one moiety of every such penalty or forfeiture shall be paid to the use of his Majesty, his heirs and successors, and the other moiety to him who shall sue for the same." *Id. s.* 24. *See sect.* 6, *ante*, p. 20.

Actions against Justices, &c.] "Every action against any justice, constable, or other person, for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this act, shall be

commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards; and if any person shall be sued for any matter or thing which he shall have done in the execution of this act, he may plead the general issue, and give the special matter in evidence." *Id. s.* 30.

Rights of the universities and vintners' company, &c. saved.] "Nothing in this act contained shall extend to alter or in any manner to affect any of the rights or privileges of the universities of *Oxford* or *Cambridge*, or the powers of the chancellors or vice chancellors of the same, as by law possessed under the respective charters of the said universities, or otherwise; (*see R.* v. *Archdall*, 3 *Nev.* & *P.* 696;) or the master, wardens, freemen, and commonalty of the vintners of the city of *London*, but not to extend to those freemen of the said company of vintners who have obtained the same by redemption only; nor to alter the time of granting licences for keeping inns in the city of *London:* provided also, that nothing in this act contained shall alter any law relating to the revenue of excise, except so far as the same is hereby expressly altered and otherwise provided for; nor to prohibit any person from selling beer in booths or other places at the time and within the limits of the ground or place in or upon which is holden any lawful fair, in like manner as such person was authorized to do before the passing of this act." *Id. s.* 36.

Interpretation clause.] "The word 'justice' shall be deemed to mean justice of the peace: and the words 'treasurer of the county or place' shall be deemed to include any officer acting in such capacity, or charged with the receipt and expenditure of monies from and out of which the cost of public prosecutions have been usually defrayed; the words 'peace officer' shall be deemed to include any petty constable, tithingman, headborough, beadle, or bailiff; the words 'parish officer' shall be deemed to include any churchwarden, chapelwarden, or overseer of the poor; and the said words 'justices,' 'treasurer of the county or place,' 'peace officer,' 'parish officer,' and the words 'high constable,' and the words 'petty constable,' and the words 'overseer of the poor,' and the words 'clerk of justices' shall each be deemed to include any person acting as such, and any number of justices, treasurers, peace officers, parish officers, high constables, petty constables, overseers of the poor, and clerks of justices; and the word 'person' and the word 'party' shall be deemed to include any number of persons and parties; and that the meaning of the aforesaid several words shall not be restricted, although the same may be subsequently referred to in the singular number and masculine gender only; and the word 'notice' and the word

'licence,' and the word 'adjournment' and the word 'day' and the word 'time,' and the word 'house,' and the word 'place' shall each be deemed to include any number of notices, licences, adjournments, days, times, houses, or places; and the word 'county' and the words 'county or place' shall be deemed severally to include any county, riding, division of the county of *Lincoln*, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words 'division or place' shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words 'parish or place' shall be deemed to include any township, hamlet, tithing, vill, extraparochial place, or any place maintaining its own poor; and the word 'inn' shall be deemed to include any inn, alehouse, or victualling-house; and the words 'inn, alehouse, or victualling-house' shall be deemed to include all houses in which shall be sold by retail any exciseable liquor, to be drunk or consumed on the premises; and the words 'exciseable liquor' shall be deemed to include any ale, beer, or other fermented malt liquor, sweets, cider, perry, wine, or other spirituous liquor which now is or hereafter may be charged with duty, either by custom or excise, and the word 'penalty' shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature; and that the meaning of the said several words shall not be restricted, although the same may be subsequently referred to in the singular number only." *Id. s.* 37.

II. *Beer shops.*

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Provisions of 1 *W.* 4, *c.* 74, *extended to* 4 *&* 5 *W.* 4, *c.* 85, p. 67.

Licence.

Who may be licensed.] Any person, who obtains a licence for the purpose, may sell "beer, ale, and porter by retail," 1 *W.* 4, *c.* 64, *s.* 1. And the same as to cider and perry. *Id. s.* 30. But no licence to sell beer or cider by retail shall be granted to any person who shall not be the real resident holder and occupier of the dwelling-house in which he shall apply to be licensed, nor shall any such licence be granted in respect of any dwelling-house, which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate, on a rent or annual value of fifteen pounds per annum at the least, if situated in the cities of *London* or *Westminster*, or within any parish or place within the bills of mortality, or within any city, cinque port, town corporate, parish, or place, the population of which, according to the last parliamentary census, shall exceed ten thousand, or within one mile, to be measured by the nearest public street or path from any polling place used at the last election for any town having the like population, and returning a member or members of parliament; nor shall any such licence be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place, in which such house and premises are situate, on a rent or annual value of eleven pounds per annum, if situated within any city, cinque port, town corporate, parish, or place, the population of which, according to such last parliamentary census, shall exceed two thousand five hundred, and shall not exceed ten thousand, or within one mile, to be measured as aforesaid, from any polling place used at the last election for any town having the like population as last aforesaid, and returning a member or members of parliament; nor shall any

such licence be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate, on a rent or annual value of eight pounds, if situated elsewhere than as aforesaid; and every licence granted contrary hereto shall be null and void. 3 & 4 *Vict. c.* 61, *s.* 1. Provided always, and be it enacted, that nothing in this act contained shall prevent any person from obtaining, at the expiration of his existing licence, a renewed licence in respect of any house in which he shall, at the time of the passing of this act, be duly licensed to retail beer or cider under the said recited acts or either of them, notwithstanding such house may not be of the rent or annual value by this act prescribed, nor to oblige such person to produce any other certificate (where a certificate is required) for obtaining his licence, than the certificate required by the said recited acts; but it shall be lawful for the officers of excise, duly authorized to grant licences, to renew and continue to grant licences to such person (being in other respects properly qualified) on the production of such certificate as last aforesaid, so long as such person shall continue to be the resident holder and occupier of the same house. *Id. s.* 18. Also the party applying must not be a sheriff's officer, or officer executing the process of any court of justice. 1 *W.* 4, *c.* 64, *s.* 2.

Certificate in what cases.] Formerly, if the licence were to be to sell beer, &c. upon the premises, the house in which it was to be retailed must have been of the annual value of 10*l.* at least; 4 & 5 W. 4, c. 85, s. 21; and the party, besides giving the bond, and paying the duty above mentioned, should produce to the person granting the licence, and deposit with him, a certificate of good character, signed by six inhabitants of his parish (not being brewers, maltsters, or licensed victuallers, &c.) and by one of the overseers, to certify that the six are inhabitants, *Id. ss.* 1, 2, 3, *and see s.* 9, unless the house was within *London* or *Westminster*, or within the bills of mortality, or within a city or town corporate, or town returning members of parliament, containing more than 5,000 inhabitants. *Id. s.* 21. But now, in all cases, the person who shall apply to be licensed to retail beer or cider, shall produce to the proper officer of excise authorized to grant such licences a certificate in writing from an overseer of the township, parish, or place in which he shall reside, certifying that such applicant is the real resident, holder and occupier of the said house, and also certifying the true rent or annual value at which such house, with the premises occupied therewith, is rated in one rating to the poor rates, according to the last sum or rate made and allowed in such township, parish, or place for the relief of the poor, and every such certificate shall be

deposited and left with the proper officer of excise by whom such licence shall be granted, and a duplicate thereof shall be deposited and left with the clerk of the peace for the county, riding, or city within which such township, parish, or place is situate. 3 & 4 *Vict. c.* 61, *s.* 2. Or, when any person shall become the occupier of a house newly erected, and not yet rated, and shall be desirous of taking out a licence to retail therein beer and cider before the making of a new rate, it shall be lawful for the proper officer of excise, if the applicant shall in other respects be duly qualified, to grant such licence, on the certificate of the overseer of the poor, certifying the rent or annual value to be not less than that at which such house, with the premises occupied therewith, will be rated in one sum to the relief of the poor, in the next rate to be made and allowed, and certifying also that the applicant has claimed to be rated in respect of the said house and premises. *Id. s.* 3. So in any extra-parochial or other place, where no rates are made or collected for the relief of the poor, it shall be lawful for the proper officers of excise authorized to grant licences to grant a licence to any person to retail beer or cider in a dwelling-house, which, with the premises occupied therewith, shall be of the real rent or annual value of fifteen pounds, eleven pounds, or eight pounds respectively, according to the situation thereof as aforesaid; and in such case, the person applying for such licence shall produce to and deposit and leave with the proper officer of excise granting such licence a certificate in writing, signed by two inhabitant householders of the township or place, certifying that the party applying is the real resident in and occupier of the dwelling-house sought to be licensed, and also certifying the true and real annual value of the same, with the premises occupied therewith, according to the best of their judgment and belief. *Id. s.* 4. And every overseer of the poor who shall refuse to grant a certificate of the rating or assessment of any rated house and premises, when demanded, or of any person having claim to be rated in respect of any newly-erected house not yet rated, or who shall falsely certify any house to be rated when the same was not duly rated at the time of the making and allowance of the last rate made and allowed for the relief of the poor, and every overseer or other person who shall falsely certify any person to be the real resident, holder, and occupier of any house, contrary to the fact, or falsely certify the rent or annual value at which any dwelling-house and premises shall now or will be rated, or the rent paid for the same, or the annual value thereof, or shall grant any certificate which shall in any other respect be wilfully false, shall forfeit twenty pounds. *Id. s.* 5.

Making or using false certificate.] Every person who shall, for the purpose of obtaining for himself, or enabling any other person to obtain, a licence to retail beer or cider, forge or coun-

terfeit any certificate, or shall produce or make use of any certificate, knowing the same to be forged or counterfeit, or the matters certified therein or any of them to be false, shall forfeit fifty pounds; and every licence for the retail of beer or cider, obtained by any person on any such forged, counterfeit, or false certificate shall, on the conviction of such person, be void to all intents and purposes, and shall be so adjudged; and every person who shall be convicted of any of the said offences shall be disqualified from obtaining any licence under the said recited acts or this act to retail beer or cider, either to be drunk or consumed on the premises or off the premises. *Id. s.* 6.

Licence how granted.] Within the limits of the Excise Office in London, the licence is granted by the commissioners of excise, or by some person appointed by them,—elsewhere, it is granted by the collectors and supervisors of excise, within their respective districts, 1 *W.* 4, *c.* 64, *s.* 2,—upon the party giving a bond, with one surety for 20*l.*, or with two sureties in 10*l.* each, conditioned for payment of any penalties incurred under this act, *Id. s.* 4, (such surety being a householder in the parish, and not being licensed under this act, *Id. s.* 5), and upon paying a duty of 1*l.* 1*s.* if the licence be to sell beer, &c. off the premises, or of 3*l.* 3*s.* if to sell beer on the premises. 4 & 5 *W.* 4, *c.* 85, *s.* 13. The form of the licence is given in the schedule to stat. 1 W. 4, c. 64, and is set out at length, *post*, p. 53; it shall be dated on the day when granted, shall expire in twelve calendar months, *Id. s.* 2, and it shall be registered at the Excise Office, and a copy of the list or register sent once in every month to the clerk of the magistrates for the district in which the licence is granted. *Id. s.* 2. It shall enable the party to sell beer, porter, ale, or cider and perry only, and not wine or spirits, *Id. s.* 2, sweets or made wines, or mead, or metheglin, 4 & 5 *W.* 4, *c.* 85, *s.* 16. One licence will be sufficient for two or more trading in partnership, if they confine their sale to one house or premises. 1 *W.* 4, *c.* 64, *s.* 10. After thus obtaining the licence, the party must then make an entry of his premises with the excise officers, in the manner required in other cases by the statutes of Excise. 3 & 4 *Vict. c.* 61, *s.* 9.

In what cases void.] Every person who shall hereafter be lawfully convicted of felony, or of selling spirits without licence, shall for ever thereafter be disqualified from selling beer and cider by retail, and no licence to sell beer and cider by retail, under the said recited acts or this act, shall be granted to any person who shall be so convicted as aforesaid; and if any such person shall, after having been so convicted as aforesaid, take out or have any licence to sell beer or cider by retail, the

same shall be void to all intents and purposes; and every person who shall, after being convicted as aforesaid, sell any beer or cider by retail, in any manner whatsoever, shall incur the penalty for so doing without licence; and in all such cases, in the prosecution for the recovery of such penalty, a certificate from the clerk of the peace, or person acting as such, of any such conviction as aforesaid, shall on the trial in such prosecution, be legal evidence thereof. 3 & 4 *Vict. c.* 61, *s.* 7.

How continued, on death.] Upon the death of any person whatever, licensed to retail beer or cider, before the expiration of the licence, it shall be lawful for the person authorized to grant licences to authorize and empower, by endorsement or otherwise, as the commissioners of excise shall direct, the executors or administrators, or the widow or child of such deceased person, who shall be possessed of and occupy the dwelling-house and premises before used for such purpose, to continue to retail beer and cider in the same house and premises during the residue of the term for which such licence was originally granted, without taking out any fresh licence, or payment of any additional duty thereon; and also at the expiration of such licence (in case the residue of the said term shall be less than three calendar months from the death of the person licensed) to grant a new licence to such executors, administrators, or widow, on payment of the proper licence duty, and entering into the usual bond. *Id. s.* 8.

Penalties.

Board over door.] Every person who shall be licensed under the provisions of this act, shall cause to be painted in letters three inches at least in length, in white upon a black ground, or in black upon a white ground, publicly visible and legible, upon a board to be placed over the door of the house or premises in which such person shall be licensed to sell by retail, the christian and surname of the persons mentioned in such licence, at full length, together with the words "Licensed to sell beer and cider by retail," [with the additional words, "not to be drunk on the premises," or "to be drunk on the premises;" 4 & 5 *W.* 4, *c.* 85, *s.* 18]; and every such person shall preserve and keep up such name and words so painted as aforesaid, during all the time that such person shall continue so licensed, upon pain that every person in any respect making default herein, shall forfeit and pay for every such offence the sum of 10*l.* 1 *W.* 4, *c.* 64, *s.* 6.

Conviction, as *post*, p. 60:—*For that he the said A. B. on* ——, *at* ——, *being a person then licensed to sell beer, ale,*

and porter by retail, under the provisions of a certain act made and passed in the first year of the reign of our late sovereign Lord William the Fourth, intituled, "An act to permit the general sale of beer and cider by retail in England;" [and of a certain other act made and passed in the fifth year of the said reign, intituled, "An act to amend an act passed in the fifth year of his present Majesty, to permit the general sale of beer and cider by retail in England,"] did not then and there, or at any time since, cause to be painted, in letters three inches at least in length, in white upon a black ground, or in black upon a white ground, publicly visible and legible, upon a board placed over the door of the house or premises of the said A. B. in which he the said A. B. was then licensed to sell beer by retail, the christian and surname of the said A. B., together with the words "Licensed" [&c. as above]: against the form of the statute in such case made and provided. Whereby, &c.*

Selling beer, cider, or perry without licence.] "Every person not being duly licensed to sell beer, cider, and perry, as the keeper of a common inn, alehouse, or victualling-house, who shall sell any beer or cider, or perry by retail, not to be drank or consumed in or upon the house or premises where sold, without having an excise retail licence in force authorizing him so to do, shall forfeit 10*l.*; and every person, not being duly licensed to sell beer, cider, and perry, as the keeper of a common inn, alehouse, or victualling-house, who shall sell any beer, cider, or perry by retail, to be drank or consumed in or upon the house or premises where sold, without having an excise retail licence in force authorizing him so to do, whether such person shall or shall not be licensed to sell beer to be drank or consumed off the premises where sold, shall forfeit 20*l.*; which said penalties shall be sued for and recovered, mitigated and applied, by the same means and under the same provisions as any other penalty may be sued for, and recovered, mitigated, and applied, under any law or laws of excise." 4 & 5 *W.* 4, *c.* 85, *s.* 17. *See* 3 & 4 *Vict. c.* 61, *s.* 7, *ante*, p. 48.

"And whereas doubts are entertained as to what is a selling of beer, or cider, or perry by retail; be it therefore enacted, that every sale of any beer, or of any cider or perry, in any less quantity than four gallons and a half, shall be deemed and taken to be a selling by retail." 4 & 5 *W.* 4, *c.* 85, *s.* 19.

"And if any person licensed to sell beer or cider, not to be consumed upon the premises, shall, with intent to evade the provisions of this act, take or carry, or authorize or employ or permit or suffer any person to take or carry any beer or cider out of or from the house or premises of such licensed person, for the purpose of being sold on his account, or for his benefit or profit drunk or consumed in any other house, or in any tent,

shed, or other building of any kind whatever belonging to such licensed person, or hired, used, or occupied by him—such beer or cider shall be deemed and taken to have been drunk or consumed upon the premises, and the person selling the same shall be subject to the like forfeitures and penalties as if such beer or cider had been actually drunk or consumed in any house or upon any premises licensed only for the sale thereof as aforesaid." 4 & 5 *W.* 4, *c.* 85, *s.* 4.

Also, by stat. 3 & 4 Vict. c. 61, s. 13, "if any person not being duly licensed to sell beer or cider, shall retail any beer or cider, either to be consumed in or upon the house or premises or off the premises where sold, or if any person shall sell any beer or cider to be consumed in or upon the house or premises where sold, without being duly licensed so to do, such person shall, in addition to any excise penalty to which he may thereby become subject, forfeit five pounds, such penalty to be recovered in the same manner as any other penalty (not being excise penalties) are by the said recited acts, 1 W. 4, c. 64, and 4 & 5 W. 4, c. 85, or this act, to be recovered, levied and applied; provided always, that no information or other proceeding for the recovery of the said penalty shall be exhibited or commenced except by and in the name of a constable or other officer of the peace."

Owner of beer shop selling wine or spirits, &c.] If any person licensed under the said recited act and this act to sell beer or cider, shall permit or suffer any wine or spirits, sweets or made wines, mead or metheglin, to be brought into his house or premises to be drunk or consumed there, or shall suffer any wines, spirits, sweets, mead or metheglin, to be drunk or consumed in his house or premises by any person whomsoever: such person shall, over and above any excise penalty or penalties to which he may be subject, forfeit 20*l.*, to be recovered, levied, mitigated, and applied in the same manner as other penalties (not being excise penalties) are by this act to be recovered, levied, mitigated, and applied." 4 & 5 *W.* 4, *c.* 85, *s.* 16.

Conviction, as in the form, *ante*, p. 48, to the asterisk,* and then thus: *did then and there permit two bottles of port wine and one gallon of rum* [*to be brought into the house and premises of him the said A. B. to be drunk and consumed there,* or *to be drunk and consumed in the house and premises of him the said A. B.*]: *against the form of the statute in such case made and provided. Whereby, &c.*

"And whereas doubts have been entertained whether persons licensed to sell beer or cider under the said act of the first year of His Majesty's reign, who shall sell spirits or wine, or sweets

or made wines, or mead or metheglin, without being licensed so to do, are liable to the penalties imposed by the laws of excise for selling spirits or wine, or sweets or made wines, or mead or metheglin without licence: be it therefore declared and enacted, that all persons licensed under the said recited act and this act, selling wine or spirits, or any sweets or made wines, or mead or metheglin, shall be liable to and shall incur all the penalties imposed by the laws of excise for selling spirits or wine, sweets or made wines, mead or metheglin, without licence." *Id. s.* 20.

Also, by stat. 3 & 4 Vict. c. 61, s. 10, if any person licensed to retail beer or cider under the said recited acts or this act, shall receive into or keep or have in his possession in any cellar, room, or any place entered for storing, keeping, or retailing beer or cider, any wine or spirits or sweets: such person shall, in addition to all other penalties, forfeit fifty pounds, to be recovered and applied according to stat. 7 & 8 G. 4, c. 58, and 4 & 5 W. 4, c. 51; and all wine and spirits and sweets found in any such entered cellars, rooms, or places, shall be forfeited; and on conviction of any such licensed person in any penalty for having wine or spirits or sweets in his possession, or for selling or retailing wine or spirits or sweets, the licence of such person for retailing beer or cider shall become null and void, and shall be so adjudged.

"And it shall be lawful for any officer of excise, at all times during the hours in which any house licensed for the retail of beer or cider may be kept open, to enter into every house, cellar, room, or place entered for the storing, keeping, or retailing of beer or cider, and to make search for and seize all wine and spirits and sweets which may be found in any such house, cellar, room, or place, and to examine all beer or cider kept therein." *Id. s.* 11.

Also, "It shall be lawful for any officer of excise, during the hours which any house is kept open for the sale of beer after the rate of one penny halfpenny or after a less rate the quart, to enter into every such house, cellar, room, or place for the keeping or retailing such beer, and to make search for and seize all wines, spirits, sweets, and all beer which by law they are not entitled to sell." *Id. s.* 12.

Selling by other than standard measure.] Every person under this act licensed to sell beer by retail, shall sell or otherwise dispose of all such beer by retail (except in quantities less than a half-pint) by the gallon, quart, pint, or half-pint measure, sized according to the standard, and shall also retail the same in a vessel sized according to such standard; and in default thereof, he shall for every such offence forfeit the illegal measure, and pay a sum not exceeding forty shillings, together with the costs of the conviction, to be recovered within thirty

appeal must be served upon both. *R.* v. *JJ. of Cheshire*, 9 *Law J.*, 89, *m.*

"The court at such session shall hear and determine the matter of such appeal, and shall make such order therein, with or without costs, as to the said court shall seem meet; and in case the act appealed against shall be the refusal to grant or to transfer any licence, and the judgment under which such act was done be reversed, it shall be lawful for the said court to grant or to transfer such licence in the same manner as if such licence had been granted at the general annual licensing meeting, or had been transferred at a special session; and the judgment of the said court shall be final and conclusive to all intents and purposes; and in case of the dismissal of such appeal, or of the affirmance of the judgment on which such act was done, and which was appealed against, the said court shall adjudge and order the said judgment to be carried into execution, and costs awarded to be paid, and shall, if necessary, issue process for enforcing such order: provided that no justice shall act in the hearing or determination of any appeal to the general or quarter sessions as aforesaid from any act done by him in or concerning the execution of this act." *Id. s.* 27.

"Provided also, that when any cause of complaint shall have arisen within any liberty, county of a city, county of a town, city or town corporate, it shall be lawful for the person who shall think himself so as aforesaid aggrieved, to appeal against any such act as aforesaid, if he shall think fit, to the quarter sessions of the county within or adjoining to which such liberty or place shall be situate, subject to all the provisions hereinbefore contained." *Id. s.* 27.

It is very doubtful, however, whether this portion of the section has not been virtually repealed by the 105th section of the corporation act. *See post, title, "Appeal," "Sessions."*

Witnesses may be bound over.] "When any person shall have given notice of his intention to appeal as aforesaid, and shall have entered into recognizance as hereinbefore directed, it shall be lawful for the justice before whom such recognizance shall have been entered into, to summon any person whose evidence shall appear to him to be material, and to require such person to be bound in recognizance to appear at the said general or quarter session, and to give evidence in such appeal: and in case any such person as aforesaid shall neglect or refuse to obey such summons, or shall refuse to enter into such recognizance, it shall be lawful for such justice as aforesaid to issue his warrant to apprehend such person so neglecting or refusing to obey such summons, and to bring him before such justice, and, if such person shall continue to refuse to enter into such recognizance, to commit him to the common gaol or

house of correction of the county or place for which such justice shall be then acting, there to remain until he shall enter into such recognizance, or shall be otherwise discharged by due course of law." *Id. s.* 28.

Costs.] "In every case where notice of appeal against the judgment of any justice in or concerning the execution of this act shall have been given, and such appeal shall have been dismissed, or the judgment so appealed against shall have been affirmed, or such appeal shall have been abandoned, it shall be lawful for the court, to whom such appeal shall have been made or intended to be made, and such court is hereby required, to adjudge and order that the party, so having appealed or given notice of his intention to appeal, shall pay to the justice to whom such notice shall have been given, or to whomsoever he shall appoint, such sum, by way of costs, as shall in the opinion of such court be sufficient to indemnify such justice from all cost and charge whatsoever, to which such justice may have been put in consequence of his having had served upon him notice of the intention of such party to appeal; and if such party shall refuse or neglect forthwith to pay such sum, it shall be lawful for the said court to adjudge and order that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid; and in every case in which the judgment so appealed against shall be reversed, it shall be lawful for such court, if it shall think fit, to adjudge and order that the treasurer of the county or place, in and for which such justice whose judgment shall have been so reversed shall have acted, on the occasion when he shall have given such judgment, shall pay to such justice, or to whomsoever he shall appoint, such sum as shall, in the opinion of such court, be sufficient to indemnify such justice from all costs and charges whatsoever to which such justice may have been so put; and the said treasurer is hereby authorized to pay the same, which shall be allowed to him in his accounts." *Id. s.* 29.

Recovery of penalties against justices.] "Every penalty and forfeiture imposed by this act upon any justice, may be sued for and recovered by action of debt in any of his Majesty's courts of record at *Westminster*; and one moiety of every such penalty or forfeiture shall be paid to the use of his Majesty, his heirs and successors, and the other moiety to him who shall sue for the same." *Id. s.* 24. *See sect.* 6, *ante*, p. 20.

Actions against Justices, &c.] "Every action against any justice, constable, or other person, for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this act, shall be

commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards; and if any person shall be sued for any matter or thing which he shall have done in the execution of this act, he may plead the general issue, and give the special matter in evidence." *Id. s.* 30.

Rights of the universities and vintners' company, &c. saved.] "Nothing in this act contained shall extend to alter or in any manner to affect any of the rights or privileges of the universities of *Oxford* or *Cambridge*, or the powers of the chancellors or vice chancellors of the same, as by law possessed under the respective charters of the said universities, or otherwise; (*see R.* v. *Archdall*, 3 *Nev.* & *P.* 696;) or the master, wardens, freemen, and commonalty of the vintners of the city of *London*, but not to extend to those freemen of the said company of vintners who have obtained the same by redemption only; nor to alter the time of granting licences for keeping inns in the city of *London:* provided also, that nothing in this act contained shall alter any law relating to the revenue of excise, except so far as the same is hereby expressly altered and otherwise provided for; nor to prohibit any person from selling beer in booths or other places at the time and within the limits of the ground or place in or upon which is holden any lawful fair, in like manner as such person was authorized to do before the passing of this act." *Id. s.* 36.

Interpretation clause.] "The word 'justice' shall be deemed to mean justice of the peace: and the words 'treasurer of the county or place' shall be deemed to include any officer acting in such capacity, or charged with the receipt and expenditure of monies from and out of which the cost of public prosecutions have been usually defrayed; the words 'peace officer' shall be deemed to include any petty constable, tithingman, headborough, beadle, or bailiff; the words 'parish officer' shall be deemed to include any churchwarden, chapelwarden, or overseer of the poor; and the said words 'justices,' 'treasurer of the county or place,' 'peace officer,' 'parish officer,' and the words 'high constable,' and the words 'petty constable,' and the words 'overseer of the poor,' and the words 'clerk of justices' shall each be deemed to include any person acting as such, and any number of justices, treasurers, peace officers, parish officers, high constables, petty constables, overseers of the poor, and clerks of justices; and the word 'person' and the word 'party' shall be deemed to include any number of persons and parties; and that the meaning of the aforesaid several words shall not be restricted, although the same may be subsequently referred to in the singular number and masculine gender only; and the word 'notice' and the word

'licence,' and the word 'adjournment' and the word 'day' and the word 'time,' and the word 'house,' and the word 'place' shall each be deemed to include any number of notices, licences, adjournments, days, times, houses, or places; and the word 'county' and the words 'county or place' shall be deemed severally to include any county, riding, division of the county of *Lincoln*, hundred, division of a county, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words 'division or place' shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words 'parish or place' shall be deemed to include any township, hamlet, tithing, vill, extraparochial place, or any place maintaining its own poor; and the word 'inn' shall be deemed to include any inn, alehouse, or victualling-house; and the words 'inn, alehouse, or victualling-house' shall be deemed to include all houses in which shall be sold by retail any exciseable liquor, to be drunk or consumed on the premises; and the words 'exciseable liquor' shall be deemed to include any ale, beer, or other fermented malt liquor, sweets, cider, perry, wine, or other spirituous liquor which now is or hereafter may be charged with duty, either by custom or excise, and the word 'penalty' shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature; and that the meaning of the said several words shall not be restricted, although the same may be subsequently referred to in the singular number only." *Id. s.* 37.

II. *Beer shops.*

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Provisions of 1 *W.* 4, *c.* 74, *extended to* 4 *&* 5 *W.* 4, *c.* 85, p. 67.

Licence.

Who may be licensed.] Any person, who obtains a licence for the purpose, may sell "beer, ale, and porter by retail," 1 *W.* 4, *c.* 64, *s.* 1. And the same as to cider and perry. *Id. s.* 30. But no licence to sell beer or cider by retail shall be granted to any person who shall not be the real resident holder and occupier of the dwelling-house in which he shall apply to be licensed, nor shall any such licence be granted in respect of any dwelling-house, which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate, on a rent or annual value of fifteen pounds per annum at the least, if situated in the cities of *London* or *Westminster*, or within any parish or place within the bills of mortality, or within any city, cinque port, town corporate, parish, or place, the population of which, according to the last parliamentary census, shall exceed ten thousand, or within one mile, to be measured by the nearest public street or path from any polling place used at the last election for any town having the like population, and returning a member or members of parliament; nor shall any such licence be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place, in which such house and premises are situate, on a rent or annual value of eleven pounds per annum, if situated within any city, cinque port, town corporate, parish, or place, the population of which, according to such last parliamentary census, shall exceed two thousand five hundred, and shall not exceed ten thousand, or within one mile, to be measured as aforesaid, from any polling place used at the last election for any town having the like population as last aforesaid, and returning a member or members of parliament; nor shall any

such licence be granted in respect of any dwelling-house which shall not, with the premises occupied therewith, be rated in one sum to the rate for the relief of the poor of the parish, township, or place in which such house and premises are situate, on a rent or annual value of eight pounds, if situated elsewhere than as aforesaid; and every licence granted contrary hereto shall be null and void. 3 & 4 *Vict. c.* 61, *s.* 1. Provided always, and be it enacted, that nothing in this act contained shall prevent any person from obtaining, at the expiration of his existing licence, a renewed licence in respect of any house in which he shall, at the time of the passing of this act, be duly licensed to retail beer or cider under the said recited acts or either of them, notwithstanding such house may not be of the rent or annual value by this act prescribed, nor to oblige such person to produce any other certificate (where a certificate is required) for obtaining his licence, than the certificate required by the said recited acts; but it shall be lawful for the officers of excise, duly authorized to grant licences, to renew and continue to grant licences to such person (being in other respects properly qualified) on the production of such certificate as last aforesaid, so long as such person shall continue to be the resident holder and occupier of the same house. *Id. s.* 18. Also the party applying must not be a sheriff's officer, or officer executing the process of any court of justice. 1 *W.* 4, *c.* 64, *s.* 2.

Certificate in what cases.] Formerly, if the licence were to be to sell beer, &c. upon the premises, the house in which it was to be retailed must have been of the annual value of 10*l.* at least; 4 & 5 W. 4, c. 85, s. 21; and the party, besides giving the bond, and paying the duty above mentioned, should produce to the person granting the licence, and deposit with him, a certificate of good character, signed by six inhabitants of his parish (not being brewers, maltsters, or licensed victuallers, &c.) and by one of the overseers, to certify that the six are inhabitants, *Id. ss.* 1, 2, 3, *and see s.* 9, unless the house was within *London* or *Westminster*, or within the bills of mortality, or within a city or town corporate, or town returning members of parliament, containing more than 5,000 inhabitants. *Id. s.* 21. But now, in all cases, the person who shall apply to be licensed to retail beer or cider, shall produce to the proper officer of excise authorized to grant such licences a certificate in writing from an overseer of the township, parish, or place in which he shall reside, certifying that such applicant is the real resident, holder and occupier of the said house, and also certifying the true rent or annual value at which such house, with the premises occupied therewith, is rated in one rating to the poor rates, according to the last sum or rate made and allowed in such township, parish, or place for the relief of the poor, and every such certificate shall be

days next after that on which such offence was committed, before two justices; and such penalty shall be over and above all penalties to which the offender may be liable under any other act." 4 & 5 *W.* 4, *c.* 85, *s.* 12.

Conviction, as in the form *ante*, p. 48, to the asterisk,* and then thus: *did then and there sell three quarts and one pint of beer to one C. D., otherwise than by the quart, pint, or half-pint measure, sized according to the standard, to wit, by a certain vessel called a quart, which was then and there much less and contained much less than a quart measure sized according to such standard, and did then and there retail the said beer to the said C. D. in the said last-mentioned vessel not sized according to such standard as aforesaid, against the form of the statute in such case made and provided. Whereby,* &c.

Permitting drunkenness in house, or committing offence against licence.] "Every seller of beer, ale, and porter by retail, having a licence under the provisions of this act, who shall permit any person or persons to be guilty of drunkenness, or disorderly conduct in the house or premises mentioned in such licence, shall for every such offence forfeit the respective sums following; and every person who shall in any way transgress or neglect, or shall be a party in transgressing or neglecting the conditions and provisions specified in such licence, or shall allow such conditions or provisions to be in any way transgressed or neglected, in the house or premises so licensed, shall be deemed guilty of disorderly conduct; and every person so licensed who shall permit any such disorderly conduct, shall for the first offence forfeit any such sum, not less than forty shillings, nor more than five pounds, as the justices before whom such retailer shall be convicted shall adjudge; and for the second such offence, any sum not less than 5*l.* nor more than 10*l.*; and for the third such offence, any sum not less than 20*l.* nor more than 50*l.*; and it shall be lawful for the justices before whom any such conviction for such third offence shall take place to adjudge, if they shall so think fit, that such offender shall be disqualified from selling beer by retail for the space of two years next ensuing such conviction, and also (if they shall so think fit) to adjudge that no beer shall be sold by retail by any person in the house or premises mentioned in the licence of such offender." 1 *W.* 4, *c.* 64, *s.* 13.

Convictions for permitting drunkenness, as in the form *ante*, p. 48, to the asterisk*; and then thus: *did then and there permit one C. D. to become drunk in the house and premises of him the said A. B., and in the said house and premises there to be and continue so drunk as aforesaid for a long space of time, to wit, for the space of one hour,* [or as the case may be], *against*

terfeit any certificate, or shall produce or make use of any certificate, knowing the same to be forged or counterfeit, or the matters certified therein or any of them to be false, shall forfeit fifty pounds; and every licence for the retail of beer or cider, obtained by any person on any such forged, counterfeit, or false certificate shall, on the conviction of such person, be void to all intents and purposes, and shall be so adjudged; and every person who shall be convicted of any of the said offences shall be disqualified from obtaining any licence under the said recited acts or this act to retail beer or cider, either to be drunk or consumed on the premises or off the premises. *Id. s.* 6.

Licence how granted.] Within the limits of the Excise Office in London, the licence is granted by the commissioners of excise, or by some person appointed by them,—elsewhere, it is granted by the collectors and supervisors of excise, within their respective districts, 1 *W.* 4, *c.* 64, *s.* 2,—upon the party giving a bond, with one surety for 20*l.*, or with two sureties in 10*l.* each, conditioned for payment of any penalties incurred under this act, *Id. s.* 4, (such surety being a householder in the parish, and not being licensed under this act, *Id. s.* 5), and upon paying a duty of 1*l.* 1*s.* if the licence be to sell beer, &c. off the premises, or of 3*l.* 3*s.* if to sell beer on the premises. 4 & 5 *W.* 4, *c.* 85, *s.* 13. The form of the licence is given in the schedule to stat. 1 W. 4, c. 64, and is set out at length, *post*, p. 53; it shall be dated on the day when granted, shall expire in twelve calendar months, *Id. s.* 2, and it shall be registered at the Excise Office, and a copy of the list or register sent once in every month to the clerk of the magistrates for the district in which the licence is granted. *Id. s.* 2. It shall enable the party to sell beer, porter, ale, or cider and perry only, and not wine or spirits, *Id. s.* 2, sweets or made wines, or mead, or metheglin, 4 & 5 *W.* 4, *c.* 85, *s.* 16. One licence will be sufficient for two or more trading in partnership, if they confine their sale to one house or premises. 1 *W.* 4, *c.* 64, *s.* 10. After thus obtaining the licence, the party must then make an entry of his premises with the excise officers, in the manner required in other cases by the statutes of Excise. 3 & 4 *Vict. c.* 61, *s.* 9.

In what cases void.] Every person who shall hereafter be lawfully convicted of felony, or of selling spirits without licence, shall for ever thereafter be disqualified from selling beer and cider by retail, and no licence to sell beer and cider by retail, under the said recited acts or this act, shall be granted to any person who shall be so convicted as aforesaid; and if any such person shall, after having been so convicted as aforesaid, take out or have any licence to sell beer or cider by retail, the

cider or perry], *nor suffer the same to be drunk or consumed in or at such house or premises at any time which, by any order of the justices of the peace made in pursuance of an Act passed in the fifth year of his present Majesty's reign, intituled "An Act to amend an Act passed in the first year of his present Majesty, to permit the general sale of beer and cider by retail in England," shall be declared to be unlawful, or at any time before one in the afternoon, or between the hours of three and five of the clock in the afternoon, or after the hour of ten of the clock in the evening, on any Sunday, Good Friday, Christmas Day, or any day appointed for a public fast or thanksgiving; and* [in cases where the licence shall be granted for beer or cider to be consumed on the premises] *all provision for billeting officers and soldiers in victualling houses contained in any act for punishing mutiny and desertion, and for the better payment of the army and their quarters, are to extend and apply to the house and premises mentioned in this licence; and this licence shall continue in force from the —— day of —— next until the —— day of —— then next ensuing, and no longer; provided and upon condition that the said A. B. shall not in the meantime become a sheriff's officer or officer for executing the process of any court of justice; nor shall the said A. B. in the meantime cease to be rated to the relief of the poor in respect of the said house and premises; and this licence shall cease and determine and shall become void in case any of the conditions or regulations contained therein shall be transgressed, or shall not be observed by the said A. B. Given under our hands and seals* [or *my hand and seal*] *this —— day of —— one thousand eight hundred and ——, at ——.*

Also, by 1 W. 4, c. 64, s. 11, "It shall be lawful for any one justice acting for any county or place where any riot or tumult shall happen, or for any two or more justices where any riot or tumult may be expected to take place, to order or direct that every person licensed under this act, and keeping any house, situate within their respective jurisdictions, in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which such justice or justices shall order or direct; and every such person who shall keep open his house at or after any hour at which such justices shall have so ordered or directed such house to be closed, shall be taken and deemed to have not maintained good order and rule therein, and to be guilty of an offence against the tenor of the licence granted for such person."

Not producing licence, if required.] "In case any complaint shall be laid before two justices of the peace against any person licensed, for any offence against the tenor of his licence, or against this act or the said recited act (1 W. 4, c. 64), it shall

and porter by retail, under the provisions of a certain act made and passed in the first year of the reign of our late sovereign Lord William the Fourth, intituled, "An act to permit the general sale of beer and cider by retail in England;" [and of a certain other act made and passed in the fifth year of the said reign, intituled, "An act to amend an act passed in the fifth year of his present Majesty, to permit the general sale of beer and cider by retail in England,"] [a] *did not then and there, or at any time since, cause to be painted, in letters three inches at least in length, in white upon a black ground, or in black upon a white ground, publicly visible and legible, upon a board placed over the door of the house or premises of the said A. B. in which he the said A. B. was then licensed to sell beer by retail, the christian and surname of the said A. B., together with the words "Licensed"* [&c. as above]: *against the form of the statute in such case made and provided. Whereby, &c.*

Selling beer, cider, or perry without licence.] "Every person not being duly licensed to sell beer, cider, and perry, as the keeper of a common inn, alehouse, or victualling-house, who shall sell any beer or cider, or perry by retail, not to be drank or consumed in or upon the house or premises where sold, without having an excise retail licence in force authorizing him so to do, shall forfeit 10*l.*; and every person, not being duly licensed to sell beer, cider, and perry, as the keeper of a common inn, alehouse, or victualling-house, who shall sell any beer, cider, or perry by retail, to be drank or consumed in or upon the house or premises where sold, without having an excise retail licence in force authorizing him so to do, whether such person shall or shall not be licensed to sell beer to be drank or consumed off the premises where sold, shall forfeit 20*l.*; which said penalties shall be sued for and recovered, mitigated and applied, by the same means and under the same provisions as any other penalty may be sued for, and recovered, mitigated, and applied, under any law or laws of excise." 4 & 5 *W.* 4, *c.* 85, *s.* 17. *See* 3 & 4 *Vict. c.* 61, *s.* 7, *ante*, p. 48.

"And whereas doubts are entertained as to what is a selling of beer, or cider, or perry by retail; be it therefore enacted, that every sale of any beer, or of any cider or perry, in any less quantity than four gallons and a half, shall be deemed and taken to be a selling by retail." 4 & 5 *W.* 4, *c.* 85, *s.* 19.

"And if any person licensed to sell beer or cider, not to be consumed upon the premises, shall, with intent to evade the provisions of this act, take or carry, or authorize or employ or permit or suffer any person to take or carry any beer or cider out of or from the house or premises of such licensed person, for the purpose of being sold on his account, or for his benefit or profit drunk or consumed in any other house, or in any tent,

less than 10*l.* nor more than 20*l.*, as the convicting justices shall adjudge." 1 *W.* 4, *c.* 64, *s.* 13.

Conviction, as in the form, *ante*, p. 48, to the asterisk,* and then thus: *did then and there knowingly sell to one C. D., one gallon of ale, which was then and there made otherwise than from malt and hops, to wit, from* ——, *he the said A. B. then and there well knowing the said ale to be so made from* ——, *as aforesaid*, [or *did then and there mix six ounces of a certain drug called* ——, *with* ——, *or did then and there dilute and adulterate with water—the beer in a certain cask in the house and premises of him the said A. B., one gallon of which said beer so diluted and adulterated as aforesaid, the said A. B. afterwards then and there in his said premises did sell to one C. D.*]; *against the form of the statute in such case made and provided. Whereby*, &c.

Keeping beer shops open at unauthorized hours.] "No person licensed to sell beer or cider by retail, shall have or keep his house open for the sale of beer or cider, nor shall suffer any beer or cider to be drank or consumed in or at such house, at any time before the hour of five of the clock in the morning, nor after twelve of the clock at night of any day in the week, in the cities of *London* or *Westminster*, or within the boundaries of any of the boroughs of *Marylebone*, *Finsbury*, the *Tower Hamlets*, *Lambeth*, or *Southwark*, as defined by stat. 2 & 3 W. 4, c. 64, nor after eleven of the clock within any parish or place within the bills of mortality, or within any city, cinque port, town corporate, parish or place, the population of which, according to the last parliamentary census, shall exceed two thousand five hundred, or within one mile, to be measured as aforesaid, from any polling place used at the last election for any town having the like population, and returning a member or members to parliament, nor after ten of the clock in the evening elsewhere, nor at any time before one of the clock in the afternoon, nor at any time during which the houses of licensed victuallers now are or hereafter shall be closed, on any *Sunday*, *Good Friday*, *Christmas Day*, or any day appointed for a public fast or thanksgiving: and if any such person shall keep his house open for selling beer or cider, or shall sell or retail beer or cider, at any other time than as herein-before prescribed and directed, such person shall forfeit the sum of forty shillings for every offence, and every separate sale shall be deemed a separate offence." 3 & 4 *Vict. c.* 61, *s.* 15.

Conviction as in the form, *post*, p. 60:—*For that he the said A. B., on* —— *at* —— *in the parish of* —— *and within the*

bills of mortality [or as the case may be, then proceeding as *ante*, p. 48, to the asterisk ; *] and then thus : *did then and there keep his house there situate open for the sale of beer or cider*, [or *did then and there sell* or *retail beer* or *cider* ; or *did then and there suffer certain quantities of beer* or *cider to be drunk and consumed in and at his house there situate*,] *after the hour of eleven of the clock in the night, to wit, at the hour of twelve of the clock in the night of the said day, against the form of the statutes in such case made and provided. Whereby*, &c.

Where such a conviction charged that the party had kept his house open for the sale of beer, and had sold beer, and had suffered and permitted beer to be consumed upon his premises after the hour limited for that purpose, and the party was convicted "for the offence aforesaid :" the court held the conviction bad, as it stated three offences, and it could not be known of which of them the party was convicted. *Newman v. Bendyshe et al., MS. Queen's Bench*, 10 *Ad. & El.* 11, 8 *Law J.* 58, *m.*

Refusing to admit the constable.] And "it shall be lawful for all constables and officers of police, and they are hereby authorized and empowered to enter into all houses which are or shall be licensed to sell beer or spirituous liquors, to be consumed upon the premises, when and so often as such constables and officers shall think proper; and if any person having such licence as aforesaid, or any servant or other person in his employ or by his directions, shall refuse to admit or shall not admit such constable or officer of police into such house or upon such premises, such person having such licence shall for the first offence forfeit and pay any sum not exceeding 5*l.*, together with the costs of the conviction, to be recovered within twenty days next after that on which such offence was committed, before one or more justices of the peace; and it shall be lawful for any two or more justices, before whom any such person shall be convicted of such offence for the second time, to adjudge (if they shall so think fit) that such offender shall be disqualified from selling beer, ale, porter, cider, or perry by retail for the space of two years next after such conviction, or for such shorter space of time as they may think proper." 4 *&* 5 *W.* 4, *c.* 85, *s.* 7.

Conviction, as *post*, p. 60: *For that he the said A. B., on —— at ——, being a person then licensed to sell beer, ale, and porter by retail in his dwelling-house there, under the provisions of a certain act*, [&c. as in the form, *ante*, p. 48, *to the* asterisk,*] *did then and there refuse to admit one C. D., a constable, into the said dwelling-house of him the said A. B., and did not then admit him the said C. D. into the same, although*

then and there required by the said C. D. so to do; against the form of the statute in such case made and provided. Whereby, &c.

Penalties how recovered and applied.] "All penalties under this act (save and except the penalty hereinbefore mentioned for selling beer by any person not duly licensed), shall and may be recovered upon the information of any person whomsoever, before two justices acting in petty sessions; and that every such penalty shall be prosecuted and proceeded for within three calendar months next after the commission of the offence, in respect of which such penalty shall be incurred; and every person licensed under this act, who shall be convicted before two justices so acting in and for the division or place in which shall be situate the house kept or heretofore kept by such person, of any offence against the tenor of the licence to him granted under this act, or of any offence for which any penalty is imposed by this act, shall, unless proof be adduced to the satisfaction of such justices, that such person had been theretofore convicted before two justices within the space of twelve calendar months next preceding of some offence against the tenor of his licence, or against this act, be adjudged by such justices to be guilty of a first offence against the provisions of this act, and to forfeit and pay any penalty by this act imposed for such offence, or if no specific penalty be imposed for such offence, then any sum not exceeding 5*l.*, together with the costs of the conviction; and if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices, within the space of twelve calendar months next preceding, of one such offence only, such person shall be adjudged by such justices to be guilty of a second offence against the provisions of this act, and to forfeit and pay any penalty by this act imposed for such offence, or if no specific penalty be so imposed, then any sum not exceeding 10*l.*, together with the costs of the conviction; and if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices, within the space of the eighteen calendar months next preceding, of two such separate offences, and if proof shall be adduced to the satisfaction of the justices that such person so charged is guilty of the offence charged against him, such person shall be adjudged to be guilty of a third offence against the provisions of this act, and to forfeit and pay any penalty imposed by this act in respect of such offence, or if no such specific penalty shall be imposed, then to forfeit and pay the sum of 50*l.*, together with the costs of the conviction." 1 *W.* 4, *c.* 64, *s.* 15.

Provided always, that "no summons or order issued by any justice of the peace or other magistrate, shall be deemed to

be legally served, unless it shall be served by some constable, special constable, police or other peace officer." 4 & 5 *W.* 4, *c.* 85, *s.* 22.

And "any justices, before whom any penalty shall be recovered under the provisions of this act, shall award, if they shall think fit, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor, and the remainder, or in case no part of such penalty shall be awarded to the prosecutor, then the whole of such penalty shall be awarded to be paid and shall be paid to the treasurer of the county within which such offence shall be committed, to be applied by the said treasurer towards defraying the expenses of such county, and in aid of the county rates of such county." 1 *W.* 4, *c.* 64, *s.* 22.

And "in every case in which, under the authority of this act, any justices shall adjudge that any offender shall pay or cause to be paid any penalty, and such offender shall refuse or neglect, within seven days after his conviction, to pay such penalty, and any costs which shall have been duly assessed and ascertained by such justices, it shall be lawful for such justices, if they shall think fit, to issue their warrant, and to levy the amount of such penalty and costs, by distress and sale of the goods and chattels of such offender, together with the costs of such distress and sale; and in every such case such offender, if in custody at the time that such warrant shall be so issued, shall be forthwith discharged; but if it shall appear to such justices that the goods and chattels of such offender are not sufficient whereon to levy such distress, together with the costs of such distress and sale, it shall be lawful for such justices to commit the offender to the common gaol, or to the house of correction of the county or place for which such justices shall be then acting, for any term not exceeding one calendar month if the penalty shall not be above 5*l.*; for any term not exceeding three calendar months if the penalty shall be above 5*l.*, and shall not be more than 10*l.*; and for any term not exceeding six calendar months, if the penalty shall be above 10*l.*: provided nevertheless, that whenever such offender shall have been committed to the common gaol or house of correction in consequence of his not having duly paid such penalty and costs, if such offender shall pay or cause to be paid to the gaoler or keeper of the house of correction, or to whomsoever such justices shall have appointed, the penalty imposed, and costs, together with all the costs of the apprehension of him, and of the conveyance of him to the said gaol or house of correction, at any time previous to the expiration of the time for which such offender shall so have been committed, such offender shall be forthwith discharged." *Id. s.* 21.

And by stat. 3 & 4 Vict. c. 61, s. 19, "all penalties and forfeitures by this act imposed, except where otherwise especially

cider or perry], *nor suffer the same to be drunk or consumed in or at such house or premises at any time which, by any order of the justices of the peace made in pursuance of an Act passed in the fifth year of his present Majesty's reign, intituled "An Act to amend an Act passed in the first year of his present Majesty, to permit the general sale of beer and cider by retail in England," shall be declared to be unlawful, or at any time before one in the afternoon, or between the hours of three and five of the clock in the afternoon, or after the hour of ten of the clock in the evening, on any Sunday, Good Friday, Christmas Day, or any day appointed for a public fast or thanksgiving; and* [in cases where the licence shall be granted for beer or cider to be consumed on the premises] *all provision for billeting officers and soldiers in victualling houses contained in any act for punishing mutiny and desertion, and for the better payment of the army and their quarters, are to extend and apply to the house and premises mentioned in this licence; and this licence shall continue in force from the —— day of —— next until the —— day of —— then next ensuing, and no longer; provided and upon condition that the said A. B. shall not in the meantime become a sheriff's officer or officer for executing the process of any court of justice; nor shall the said A. B. in the meantime cease to be rated to the relief of the poor in respect of the said house and premises; and this licence shall cease and determine and shall become void in case any of the conditions or regulations contained therein shall be transgressed, or shall not be observed by the said A. B. Given under our hands and seals* [or *my hand and seal*] *this —— day of —— one thousand eight hundred and ——, at ——.*

Also, by 1 W. 4, c. 64, s. 11, "It shall be lawful for any one justice acting for any county or place where any riot or tumult shall happen, or for any two or more justices where any riot or tumult may be expected to take place, to order or direct that every person licensed under this act, and keeping any house, situate within their respective jurisdictions, in or near the place where such riot or tumult shall happen or be expected to take place, shall close his house at any time which such justice or justices shall order or direct; and every such person who shall keep open his house at or after any hour at which such justices shall have so ordered or directed such house to be closed, shall be taken and deemed to have not maintained good order and rule therein, and to be guilty of an offence against the tenor of the licence granted for such person."

Not producing licence, if required.] "In case any complaint shall be laid before two justices of the peace against any person licensed, for any offence against the tenor of his licence, or against this act or the said recited act (1 W. 4, c. 64), it shall

be lawful for the said justices (if they shall think fit) to require such person to produce his licence before them for their examination; and if such person shall wilfully neglect or refuse so to do, he shall forfeit and pay for such offence such sum not exceeding 5*l.* as the said justices shall think proper; and such person shall and may be convicted, proceeded against, and dealt with for such offence, in all respects in the same manner, *mutatis mutandis*, as is directed by the said recited act with regard to persons guilty of a first offence against the said act; and the penalty imposed for such offence shall be applied in the same manner as a penalty for a first offence against the said act is thereby directed to be applied." 4 & 5 *W.* 4, *c.* 85, *s.* 10.

Conviction, as in the form, *ante*, p. 48, to the asterisk,* and then thus: *and being then and there required to produce his said licence by two justices of the peace, upon a certain complaint before them against the said A. B. for a certain offence against the tenor of his said licence, did then and there wilfully neglect and refuse to produce his said licence: against the form of the statute in such case made and provided. Whereby*, &c.

Adulterating beer, &c.] "If any person so licensed as aforesaid, shall knowingly sell any beer, ale, or porter, made otherwise than from malt and hops; or shall mix or cause to be mixed any drugs or other pernicious ingredients with any beer sold in his house or premises; or shall fraudulently dilute or in any way adulterate any such beer: such offender shall, for the first offence, forfeit any sum not less than 10*l.* nor more than 20*l.* as the justices before whom such offender shall be convicted of such offence shall adjudge; and for the second such offence, such offender shall be adjudged to be disqualified from selling beer, ale, or porter by retail for the term of two years, or to forfeit any sum of money not less than 20*l.* nor more than 50*l.* at the discretion of the justices before whom such offender shall be adjudged guilty of such second offence; and if any offender convicted of such offence as last aforesaid, shall during such term of two years sell any beer, ale, or porter by retail, either in the house and premises mentioned in the licence of such offender, or in any other place, he shall forfeit any sum not less than 25*l.* nor more than 50*l.*, and shall be subject to a like penalty at any and every house or place where he shall commit such offence; and if any person shall at any time, during any term in which it shall not be lawful for any beer to be sold by retail on the premises of any offender, sell any beer by retail on such premises knowing that it was not lawful to be sold, such offender shall forfeit any sum not

less than 10*l.* nor more than 20*l.*, as the convicting justices shall adjudge." 1 *W.* 4, *c.* 64, *s.* 13.

Conviction, as in the form, *ante*, p. 48, to the asterisk,* and then thus: *did then and there knowingly sell to one C. D., one gallon of ale, which was then and there made otherwise than from malt and hops, to wit, from* ——, *he the said A. B. then and there well knowing the said ale to be so made from* ——, *as aforesaid*, [or *did then and there mix six ounces of a certain drug called* ——, *with* ——, *or did then and there dilute and adulterate with water—the beer in a certain cask in the house and premises of him the said A. B., one gallon of which said beer so diluted and adulterated as aforesaid, the said A. B. afterwards then and there in his said premises did sell to one C. D.*] *; against the form of the statute in such case made and provided. Whereby*, &c.

Keeping beer shops open at unauthorized hours.] "No person licensed to sell beer or cider by retail, shall have or keep his house open for the sale of beer or cider, nor shall suffer any beer or cider to be drank or consumed in or at such house, at any time before the hour of five of the clock in the morning, nor after twelve of the clock at night of any day in the week, in the cities of *London* or *Westminster*, or within the boundaries of any of the boroughs of *Marylebone*, *Finsbury*, the *Tower Hamlets*, *Lambeth*, or *Southwark*, as defined by stat. 2 & 3 W. 4, c. 64, nor after eleven of the clock within any parish or place within the bills of mortality, or within any city, cinque port, town corporate, parish or place, the population of which, according to the last parliamentary census, shall exceed two thousand five hundred, or within one mile, to be measured as aforesaid, from any polling place used at the last election for any town having the like population, and returning a member or members to parliament, nor after ten of the clock in the evening elsewhere, nor at any time before one of the clock in the afternoon, nor at any time during which the houses of licensed victuallers now are or hereafter shall be closed, on any *Sunday*, *Good Friday*, *Christmas Day*, or any day appointed for a public fast or thanksgiving: and if any such person shall keep his house open for selling beer or cider, or shall sell or retail beer or cider, at any other time than as herein-before prescribed and directed, such person shall forfeit the sum of forty shillings for every offence, and every separate sale shall be deemed a separate offence." 3 & 4 *Vict. c.* 61, *s.* 15.

Conviction as in the form, *post*, p. 60:—*For that he the said A. B., on* —— *at* —— *in the parish of* —— *and within the*

bills of mortality [or as the case may be, then proceeding as *ante*, p. 48, to the asterisk ; *] and then thus : *did then and there keep his house there situate open for the sale of beer or cider*, [or *did then and there sell* or *retail beer* or *cider* ; or *did then and there suffer certain quantities of beer* or *cider to be drunk and consumed in and at his house there situate*,] *after the hour of eleven of the clock in the night, to wit, at the hour of twelve of the clock in the night of the said day, against the form of the statutes in such case made and provided. Whereby*, &c.

Where such a conviction charged that the party had kept his house open for the sale of beer, and had sold beer, and had suffered and permitted beer to be consumed upon his premises after the hour limited for that purpose, and the party was convicted "for the offence aforesaid :" the court held the conviction bad, as it stated three offences, and it could not be known of which of them the party was convicted. *Newman v. Bendyshe et al., MS. Queen's Bench*, 10 *Ad. & El.* 11, 8 *Law J.* 58, *m*.

Refusing to admit the constable.] And "it shall be lawful for all constables and officers of police, and they are hereby authorized and empowered to enter into all houses which are or shall be licensed to sell beer or spirituous liquors, to be consumed upon the premises, when and so often as such constables and officers shall think proper; and if any person having such licence as aforesaid, or any servant or other person in his employ or by his directions, shall refuse to admit or shall not admit such constable or officer of police into such house or upon such premises, such person having such licence shall for the first offence forfeit and pay any sum not exceeding 5*l*., together with the costs of the conviction, to be recovered within twenty days next after that on which such offence was committed, before one or more justices of the peace; and it shall be lawful for any two or more justices, before whom any such person shall be convicted of such offence for the second time, to adjudge (if they shall so think fit) that such offender shall be disqualified from selling beer, ale, porter, cider, or perry by retail for the space of two years next after such conviction, or for such shorter space of time as they may think proper." 4 & 5 *W.* 4, *c.* 85, *s.* 7.

Conviction, as *post*, p. 60: *For that he the said A. B., on —— at ——, being a person then licensed to sell beer, ale, and porter by retail in his dwelling-house there, under the provisions of a certain act*, [&c. as in the form, *ante*, p. 48, *to the* asterisk,*] *did then and there refuse to admit one C. D., a constable, into the said dwelling-house of him the said A. B., and did not then admit him the said C. D. into the same, although*

then and there required by the said C. D. so to do; against the form of the statute in such case made and provided. Whereby, &c.

Penalties how recovered and applied.] "All penalties under this act (save and except the penalty hereinbefore mentioned for selling beer by any person not duly licensed), shall and may be recovered upon the information of any person whomsoever, before two justices acting in petty sessions; and that every such penalty shall be prosecuted and proceeded for within three calendar months next after the commission of the offence, in respect of which such penalty shall be incurred; and every person licensed under this act, who shall be convicted before two justices so acting in and for the division or place in which shall be situate the house kept or heretofore kept by such person, of any offence against the tenor of the licence to him granted under this act, or of any offence for which any penalty is imposed by this act, shall, unless proof be adduced to the satisfaction of such justices, that such person had been theretofore convicted before two justices within the space of twelve calendar months next preceding of some offence against the tenor of his licence, or against this act, be adjudged by such justices to be guilty of a first offence against the provisions of this act, and to forfeit and pay any penalty by this act imposed for such offence, or if no specific penalty be imposed for such offence, then any sum not exceeding 5*l.*, together with the costs of the conviction; and if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices, within the space of twelve calendar months next preceding, of one such offence only, such person shall be adjudged by such justices to be guilty of a second offence against the provisions of this act, and to forfeit and pay any penalty by this act imposed for such offence, or if no specific penalty be so imposed, then any sum not exceeding 10*l.*, together with the costs of the conviction; and if proof shall be adduced to the satisfaction of such justices that such person had been previously convicted before two justices, within the space of the eighteen calendar months next preceding, of two such separate offences, and if proof shall be adduced to the satisfaction of the justices that such person so charged is guilty of the offence charged against him, such person shall be adjudged to be guilty of a third offence against the provisions of this act, and to forfeit and pay any penalty imposed by this act in respect of such offence, or if no such specific penalty shall be imposed, then to forfeit and pay the sum of 50*l.*, together with the costs of the conviction." 1 *W.* 4, *c.* 64, *s.* 15.

Provided always, that "no summons or order issued by any justice of the peace or other magistrate, shall be deemed to

be legally served, unless it shall be served by some constable, special constable, police or other peace officer." 4 & 5 *W.* 4, *c.* 85, *s.* 22.

And "any justices, before whom any penalty shall be recovered under the provisions of this act, shall award, if they shall think fit, any portion of the same, not in any case exceeding one moiety thereof, to the use of the prosecutor, and the remainder, or in case no part of such penalty shall be awarded to the prosecutor, then the whole of such penalty shall be awarded to be paid and shall be paid to the treasurer of the county within which such offence shall be committed, to be applied by the said treasurer towards defraying the expenses of such county, and in aid of the county rates of such county." 1 *W.* 4, *c.* 64, *s.* 22.

And "in every case in which, under the authority of this act, any justices shall adjudge that any offender shall pay or cause to be paid any penalty, and such offender shall refuse or neglect, within seven days after his conviction, to pay such penalty, and any costs which shall have been duly assessed and ascertained by such justices, it shall be lawful for such justices, if they shall think fit, to issue their warrant, and to levy the amount of such penalty and costs, by distress and sale of the goods and chattels of such offender, together with the costs of such distress and sale; and in every such case such offender, if in custody at the time that such warrant shall be so issued, shall be forthwith discharged; but if it shall appear to such justices that the goods and chattels of such offender are not sufficient whereon to levy such distress, together with the costs of such distress and sale, it shall be lawful for such justices to commit the offender to the common gaol, or to the house of correction of the county or place for which such justices shall be then acting, for any term not exceeding one calendar month if the penalty shall not be above 5*l.*; for any term not exceeding three calendar months if the penalty shall be above 5*l.*, and shall not be more than 10*l.*; and for any term not exceeding six calendar months, if the penalty shall be above 10*l.*: provided nevertheless, that whenever such offender shall have been committed to the common gaol or house of correction in consequence of his not having duly paid such penalty and costs, if such offender shall pay or cause to be paid to the gaoler or keeper of the house of correction, or to whomsoever such justices shall have appointed, the penalty imposed, and costs, together with all the costs of the apprehension of him, and of the conveyance of him to the said gaol or house of correction, at any time previous to the expiration of the time for which such offender shall so have been committed, such offender shall be forthwith discharged." *Id. s.* 21.

And by stat. 3 & 4 Vict. c. 61, s. 19, "all penalties and forfeitures by this act imposed, except where otherwise especially

directed, shall be sued for, recovered, mitigated, and applied in the same manner and by the same means as the penalties imposed by the said recited acts of the first and fourth and fifth years of the reign of his late Majesty King William the Fourth are directed to be sued for, recovered, mitigated, and applied; and all the powers, provisions, and authorities and regulations in the said acts contained, for the recovery, mitigation, and application of penalties, shall, except where otherwise specially directed, extend to and be put in force, as to penalties imposed by this act, as fully and effectually as if they were herein repeated and re-enacted,"

As to offences against stat. 4 & 5 W. 4, c. 85, see the 11th section of that statute, *post*, p. 64.

Conviction.] "A conviction in the form or to the effect following, *mutatis mutandis*, as the case may be, shall be good and effectual to all intents and purposes whatsoever, without stating the case of the facts or evidence in any more particular manner; (that is to say,)"

to wit. } *Be it remembered, that on this —— day of ——, in the year ——, A. B., of ——, was duly convicted before us, C. D. and E. F., two of Her Majesty's justices of the peace in petty sessions for the —— of ——, for that* [here state the offence, and the time and place when committed,] *whereby the said A. B. has forfeited the sum of ——, this being adjudged to be the first* [or *second* or *third*] *offence* [as the case shall happen to be] *against the provisions of an act to permit the general sale of beer and cider by retail in England,* [or in case of an offence against stat. 4 & 5 W. 4, c. 85, "*against the provisions of an act to amend an act to permit,*" &c., as above; or in case of an offence against stat. 3 & 4 Vict. c. 61, "*against the provisions of an act to amend the acts relating to the general sale of beer and cider by retail in England,*"] *besides the costs of this conviction, which we the said justices do hereby assess at the sum of ——, pursuant to the statute in such case made and provided. Given under our hands and seals the day and year above written.* 1 *W.* 4, *c.* 64, *s.* 25.

Which conviction shall be returned to the sessions. *Id. s.* 26.

It shall be lawful for any justice or justices of the peace, when he or they shall see cause, to mitigate any penalty incurred for any offence committed against the said recited acts or this act; provided that where any conviction shall take place on any information exhibited under the laws of excise, such mitigated penalty shall not be less than one fourth part of the penalty, 3 & 4 *Vict. c.* 61, *s.* 16.

And no person licensed to retail beer or cider under the said

recited acts or this act shall forfeit his licence for a first offence against the tenor or conditions of his licence except as hereinbefore provided; and no such person shall be deemed to have forfeited his licence, on any conviction by any justice of the peace for any offence, unless such forfeiture shall be adjudged and declared by the justice or justices by whom such person shall be convicted of the offence in respect of which the forfeiture shall be incurred; and when any justice of the peace shall adjudge and declare the licence of any person to be forfeited, such justices shall cause notice in writing to be immediately given to the commissioners of excise within the limits of the chief office of excise, or to the collector of excise out of such limits of such adjudication. *Id. s.* 17.

Proceedings against sureties.] "In case any person licensed under this act shall be convicted of any offence against this act, and shall not pay the penalty incurred by such conviction, it shall be lawful for the justices convicting such offender, after the expiration of one calendar month next after such conviction, to summon any surety or sureties named in the bond entered into and executed by such person and his surety or sureties at the time of obtaining his licence, to appear before the said justices, and show cause why the penalty mentioned in such bond should not be paid by such surety or sureties, or so much thereof as shall be sufficient to pay any penalty incurred by the party licensed, or to satisfy so much of such penalty so incurred as shall remain unpaid; and in case any such surety shall not show any sufficient cause to the contrary, it shall be lawful for such justices to adjudge that such penalty, if not paid, or so much thereof as aforesaid, shall be paid by such surety within fourteen days; and in case such penalty, or so much thereof as aforesaid, shall not be paid within fourteen days, it shall be lawful for such justices, if they shall think fit, to issue their warrant, and to levy the amount of such penalty, or so much thereof as aforesaid, by distress and sale of the goods and chattels of such surety, together with the costs of such distress and sale; and the certificate of the commissioners of excise, or their officer, or other persons by this act authorized to grant any licence, of the date of such bond, and the names and descriptions of the surety or sureties in such bond, shall be sufficient evidence of such bond, and of the contents and execution thereof, against any surety or sureties, in any proceedings under this act." 1 *W.* 4, *c.* 64, *s.* 19.

The following may be the form of the order and adjudication upon the surety:—

County of ——, *to wit*: *Whereas on* ——, *a certain excise licence was granted to A. B., of* ——, *to sell beer, ale, and*

porter, at —— aforesaid; and it is now proved to us whose names are hereunto set and seals affixed, being two of Her Majesty's justices of the peace in and for the said county of ——, that at the time of receiving such licence as aforesaid by the said A. B., he the said A. B., together with C. D. and E. F. as his sureties, did enter into a certain bond to the commissioners of excise, in the penal sum of ——, conditioned for the payment by the said A. B., or by the said C. D. and E. F. as his sureties as aforesaid, of any penalty or sum of money, not exceeding the sum aforesaid, which should be incurred for any offence against a certain act of parliament, intituled "An Act to permit the general sale of beer and cider by retail in England," by the said A. B., or for the said sum of —— pounds, in case such penalty should exceed the said sum; and whereas it is now also proved to us the said justices, that on —— the said A. B. was duly convicted before us of having on ——, [here describe the offence as in the conviction,] *against the form of the said act, and that he hath not as yet paid the said last mentioned penalty, or any part thereof; and the said C. D. and E. F. being duly summoned to appear before us the said justices now here, to show cause why the penalty mentioned in the said bond should not be paid by them, the said C. D. and E. F., or so much thereof as should be sufficient to pay the penalty so incurred by the said A. B. as aforesaid, and the said C. D. and E. F. do not, nor doth either of them show any sufficient cause to the contrary; Now therefore we, the said justices, do hereby order and adjudge, that the said C. D. and E. F. shall, within fourteen days from the date hereof, pay the said last-mentioned penalty of £——, so incurred by the said A. B., and remaining unpaid as aforesaid. Dated,* &c.

Appeal.] "It shall and may be lawful for the party convicted of any such third offence [*see sect.* 15, *ante*, p. 55,] to appeal to the general sessions or quarter sessions of the peace then next ensuing, unless such sessions shall be held within twelve days next after such conviction, and in that case to the then next subsequent sessions, and in such case the party so convicted shall before such justices so convicting forthwith enter into a recognizance, with two sufficient sureties, personally to appear at the said general session or quarter session, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; which recognizances such justices are hereby authorized to require and take; or, in failure of the party convicted entering into such recognizances, such conviction shall remain good and valid to all intents and purposes; and the said justices who shall take such recognizance from the party convicted, are also hereby required to bind the person who shall make such charge in a recognizance to appear at such

general or quarter sessions as aforesaid, then and there to give evidence against the person so charged, and in like manner to bind any other person who shall have any knowledge of the circumstances of such offence; and it shall be lawful for the said court of general session or quarter session to adjudge such person to be guilty of any such third offence against the provisions of this act, as the case may be, and such adjudication shall be final to all intents and purposes; and it shall be lawful for such court of general session or quarter session to punish such offender by fine, not exceeding the sum of one hundred pounds, together with the costs of such appeal, or to adjudge the licence granted to and held by or on behalf of such offender to be forfeited and void, or to adjudge that no beer shall be sold by retail in the house or premises mentioned in the licence of such offender, for the term of two years from the date of such adjudication, or to punish such offender by such fine as aforesaid, and to adjudge such premises to be disqualified for the sale of beer as aforesaid, and such licence to be forfeited and void; and if such licence shall be adjudged to be forfeited and void, it shall thenceforth be void accordingly; and whenever in such case, or in any other case, the licence of such offender shall be adjudged to be void, such offender shall from and after such adjudication, be deemed and taken to be incapable of selling beer, ale, or porter by retail in any house kept by him, for the space of two years, to be computed from the time of such adjudication; and any licence granted to such person during such term shall be void to all intents and purposes." 1 *W.* 4, *c.* 64, *s.* 16.

The justices in this case should inform the defendant at the time of the conviction, of his right to appeal, and of the necessity of his entering into a recognizance, if he do appeal.

"And in every case in which any appeal shall be made by any person convicted of any offence under the provisions of this act, to the general session or quarter session, it shall be lawful for the convicting justices, if no other fit and proper person shall appear to prosecute such charge, and to carry on such proceedings as may be necessary to obtain at such session an adjudication thereon, to order that the constable or other peace officer of the parish or place in which shall be situate the house kept by the person charged, shall carry on all proceedings necessary to obtain such adjudication as aforesaid, and to bind such constable or other peace officer in a sufficient recognizance so to do; and it shall be lawful for the justices before whom such offender shall have been convicted, to order the treasurer of the county or place in and for which such justices shall then act, to pay to such constable or other peace officer, and to the witness or witnesses on his behalf, such sum or sums of money as to the court shall appear to be

sufficient to reimburse such constable or other peace officer, and such witness or witnesses respectively, the expenses that he or they shall have been severally put to in and about such prosecution, which order the clerk of the peace is hereby directed and required forthwith to make out and deliver to such constable or other peace officer, or to such witness or witnesses; and the said treasurer is hereby authorized and required, upon sight of such order, forthwith to pay to such constable or other peace officer or other person authorized to receive the same, such money as aforesaid, and the said treasurer shall be allowed the same in his accounts. *Id. s.* 18.

Costs.] And "whenever it shall happen that any appeal, respecting which any recognizance shall be entered into in pursuance of this act, shall be dismissed, or that the conviction appealed against shall be affirmed, or that such appeal shall be abandoned, it shall be lawful for the court to whom such appeal shall have been made or intended to be made, and such court is hereby required, to adjudge and order that the party so having appealed or having entered into such recognizance shall pay to the justices before whom such recognizance shall have been entered into, or to whomsoever they shall appoint, such sum by way of costs, as shall in the opinion of such court be sufficient to indemnify such justices from all costs and charges whatsoever, to which such justices may have been put, in consequence of the intention or declared intention of such party to appeal; and if such party shall refuse or neglect to pay forthwith such sum, it shall be lawful for the said court to order and adjudge that the party so refusing or neglecting shall be committed to the common gaol or house of correction, there to remain until such sum be paid, or for any time not exceeding six calendar months, unless such sum be sooner paid; and in every case in which the conviction so appealed against shall be reversed, it shall be lawful for such court (if it shall think fit) to adjudge and order that the treasurer of the county or place in and for which such justices, whose judgment shall have been so reversed, shall have acted on the occasion when they shall have given such judgment, shall pay to such justices, or whomsoever they shall appoint, such sum as shall in the opinion of such court be sufficient to indemnify such justices from all costs and charges whatsoever to which such justices may have been so put; and the said treasurer is hereby authorized to pay the same, which shall be allowed to him in his accounts. 1 *W.* 4, *c.* 64, *s.* 17.

Witnesses.] "Any person summoned as a witness to give evidence before any justices or sessions, touching any of the

matters aforesaid, either on the part of the complainant or of the person accused, who shall neglect or refuse to appear at the time and place for that purpose appointed, and who shall not make such reasonable excuse for such neglect or refusal as shall be admitted and allowed by such justices or sessions, or who appearing shall refuse to be examined on oath or affirmation and give evidence, shall on conviction before such justices forfeit and pay for every such offence any sum not exceeding 10*l.*" *Id. s.* 20.

Defects in form. No certiorari, &c.] "No conviction under this act, nor any adjudication made upon appeal therefrom, shall be quashed for want of form, nor shall be removed by writ of certiorari or otherwise into any of His Majesty's superior courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and that there be a good and valid conviction to sustain the same." 1 *W.* 4, *c.* 64, *s.* 27.

Saving as to the cinque ports.] "Provided always, that nothing herein contained shall extend to give the justices of the county or any division thereof any power or authority for the putting of the provisions of this act in execution within any of the cinque ports or either of the two ancient towns, or any of the corporate or other members or liberties of the cinque ports or two ancient towns; but that it shall be lawful for the justices of and for each of the principal cinque ports and two ancient towns, and the liberties thereof, and for the justices of and for the liberties thereof, and the corporate members, to act within the same respectively as they have been accustomed, and for them or any of them to act within each of the corporate members immediately belonging or subordinate to such principal cinque port or ancient town, with the justice or justices of each such corporate member, for the purpose of hearing complaints as to offences against this act in all such cases in which the justices of the county are hereinbefore empowered or authorized to act with the justice or justices of any liberty, county of a city, county of a town, city or town corporate." 1 *W.* 4, *c.* 64, *s.* 24.

To whom the act shall not extend.] "Nothing in this act contained shall extend to alter or in any manner to affect any of the rights or privileges of the universities of *Oxford* or *Cambridge*, or any of the powers and authorities vested by charter or otherwise in the chancellors, masters, and scholars of the said universities, and their successors, or in the master, wardens, freemen, and commonalty of the vintners of the city of *London*, but not to extend to those freemen of the said

company of vintners who have obtained the same by redemption only; nor in any way to affect any licence to the keeper of any inn, alehouse, or victualling-house, unless in so far as relates to the sale of beer by retail; nor to prohibit any person from selling beer in booths or other places at the time and within the limits of the ground or place in or upon which is holden any lawful fair, in like manner as such person was authorized to do before the passing of this Act." 1 *W.* 4, *c.* 64, *s.* 29. A similar provision is contained in stat. 3 & 4 Vict. c. 61, s. 22.

Interpretation clause.] And in order to remove doubts as to the meaning of certain words in this Act, be it enacted, that the word "justice" shall be deemed to mean justice of the peace; and that the word "person" and the word "party" shall be deemed to include any number of persons and parties; and that the word "licence" and the word "day," and the word "time," and the word "house," and the word "place," shall each be deemed to include any number of licences, days, times, houses, or places; and that the word "beer" shall in all cases be deemed to include beer, ale, and porter; and that the word "cider" shall in all cases be deemed to include cider and perry; and that the word "county," and the words "county or place," shall be deemed severally to include any county, riding, division of the county of *Lincoln*, hundred, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and the words "division or place" shall be deemed to include any division of a county or riding, liberty, division of a liberty, county of a city, county of a town, city, cinque port, or town corporate; and that the words "parish or place" shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor; and that the word "penalty" shall be deemed to include any fine, penalty, or forfeiture of a pecuniary nature; and that the meaning of the several words in this Act shall not be restricted, although the same may be subsequently referred to in the singular number or masculine gender only. 1 *W.* 4, *c.* 64, *s.* 32.

Actions against justices.] "Every action against any justice, constable or other person, for or on account of any matter or thing whatsoever done or commanded by him in the execution of his duty or office under this Act, shall be commenced within three calendar months after the cause of action or complaint shall have arisen, and not afterwards; and if any person shall be sued for any matter or thing which he shall have done in the execution of this act, he may plead the general issue and give the special matter in evidence." 1 *W.* 4, *c.* 64, *s.* 28.

Provisions, &c. of 1 *W.* 4, *c.* 64, *extended to* 4 & 5 *W.* 4, *c.* 85.] "All the powers, regulations, proceedings, forms, penalties, forfeitures, and provisions contained in the said recited act with reference to persons licensed under the said act, and to the offences committed by such persons against the said act, or against the tenor of any licence granted under the said act, and also with reference to the sureties of such persons, and to persons doing the things thereby prohibited without the licence required by the said act, shall (except where they are altered by this act or are repugnant thereto) be deemed and taken to be applicable to all persons licensed under this act, and to all offences committed by such persons of the same description as the offences mentioned in the said act, and to the sureties of all such persons in respect of such offences, and to all persons doing, without the licence required by this act, things of the same description as the things prohibited without the licence required by the said act, as fully and effectually as if all the said powers, regulations, proceedings, forms, penalties, forfeitures, and provisions had been repeated and re-enacted in this act, with reference to persons licensed under this act, and to the sureties of such persons, and to persons acting without the licence required by this act; and also that all the powers, regulations, and provisions in the said act contained, authorizing any party convicted to appeal to the general session or quarter sessions of the peace against any convictions under the said act, shall also extend and apply to any convictions under this act." 4 & 5 *W.* 4, *c.* 85, *s.* 11. A similar provision is contained in stat. 3 & 4 Vict. c. 61, s. 11.

III. *Canteens.*.

By the annual mutiny act (8 & 9 Vict. c. 8, s. 74), "Where any persons shall hold any canteens under proper authority of the board of ordnance, it shall be lawful for any two justices, within their respective jurisdictions, to grant or transfer any beer, wine or spirit licence to such persons, without regard to time of year or to the notices or certificates required by any act in respect of such licences; and the commissioners of excise, or their proper officers within their respective districts, shall also grant such licences as aforesaid; and such persons so holding canteens, and having such licences, may sell therein victuals or exciseable liquors, without being subject to any penalty or forfeiture."

ALIEN.

The following is the substance of the only alien act now in force, namely, the 6 Will. 4, c. 11. It is provided by sect. 11, that nothing in it contained shall affect any foreign ambassador or other public minister duly authorized; nor the domestic servant of any such ambassador or minister, registered as such according to law, or being actually attendant upon such ambassador or minister; nor any alien who shall have been residing here three years, and shall have obtained a certificate thereof from one of the secretaries of state; nor any alien under 14 years of age, in respect of any act done or omitted by him.

By sect. 11, it is also provided, that if any question shall arise whether any person alleged to be an alien, and to be subject to the provisions of this act, be an alien or not, or is or is not subject to the said provisions or any of them, the proof that such person is a natural born subject, or a denizen or naturalized, or that such person (if an alien) is not subject to the provisions of this act by reason of any exception in the act or otherwise, shall lie upon the person so alleged to be an alien, and subject to the provisions of this act.

As to the rights of aliens, and in what manner they may become naturalized, *see stat.* 7 & 8 *Vict. c.* 66.

Masters of ships to make declaration.] The master of every vessel, which shall arrive in this realm from foreign parts, shall immediately upon his arrival "declare in writing to the chief officer of the customs at the port of arrival, whether there is, to the best of his knowledge, any alien on board his vessel, and whether any alien hath to his knowledge landed therefrom at any place within this realm; and shall in his said declaration specify the number of aliens (if any) on board his vessel, or who have to his knowledge landed therefrom, and their names, rank, occupation, and description, as far as he shall be informed thereof;" and if such master shall refuse or neglect to make such declaration, or make a false one, he shall forfeit 20*l.* and also 10*l.* for each alien on board at the time of such vessel's arrival, or who to his knowledge landed therefrom within this realm, whom such master shall have wilfully refused or neglected to declare. 6 *W.* 4, *c.* 11, *s.* 2. If such master neglect or refuse forthwith to pay the penalty, any officer of the customs may detain the vessel until the same be paid. *Id.* The above section, however, does not extend to mariners actually employed in the navigation of such vessel, during the time they are so employed. *Id.*

If such declaration be made, the chief officer of the customs

at the port shall, within two days, transmit a copy of it to one of the secretaries of state. *Id. s.* 5.

Alien to produce passport, and make declaration.] Every alien who shall arrive in any part of the United Kingdom from foreign parts, "shall immediately after such arrival present and show to the chief officer of the customs at the port of debarkation, for his inspection, any passport which may be in his possession; and declare in writing to such chief officer, or verbally make to him a declaration, to be by him reduced into writing, of the day and place of his landing, and of his name, and shall also declare to what country he belongs and is subject, and the country and place from whence he shall then have come." And if any such alien shall neglect or refuse to present and show any passport which may be in his possession, or to make such declaration, he shall forfeit the sum of 2*l.* 6 *W.* 4, *c.* 11, *s.* 3.

Upon the passport being produced and the declaration made, the officer of the customs shall register the declaration, and grant the alien a certificate, 6 *W.* 4, *c.* 11, *s.* 4, without fee, under a penalty of 20*l.*; *Id. s.* 8; a copy of which certificate he shall transmit to one of the secretaries of state. *Id. s.* 5. And if any certificate so issued to an alien "shall be lost, mislaid, or destroyed, and such alien shall produce to one of His Majesty's justices of the peace proof thereof, and shall make it appear to the satisfaction of such justice that he or she hath duly conformed with this act, it shall be lawful for such justice, and he is hereby required, to testify the same under his hand;" and such alien shall thereupon be entitled to receive a fresh certificate from the secretary of state. *Id. s.* 7. On quitting the realm, the alien shall deliver the certificate to the officer of the customs, who shall insert therein that the alien has departed the realm, and shall transmit the same to the secretary of state. *Id. s.* 6.

Making false declarations, forging certificates, &c.] "If any person shall wilfully make or transmit any false declaration, or shall wilfully forge, counterfeit, or alter, or cause to be forged, counterfeited, or altered, or shall utter, knowing the same to be forged, counterfeited, or altered, any declaration or certificate hereby directed; or shall obtain any such certificate under any other name or description than the true name and description of the alien intended to be named and described, without disclosing to the person granting such certificate the true name and description of such alien; or shall falsely pretend to be the person intended to be named and described in any such certificate;" penalty not exceeding 100*l.*, or imprisonment for not more than three calendar months, at the discretion of the justices. 6 *W.* 4, *c.* 11, *s.* 9.

Proceedings to recover penalties.] All offences against this act shall be prosecuted within six calendar months next after the offence committed, and all such offences shall be prosecuted before two or more justices of the peace, of the place where the offence shall be committed, who are required, in default of payment of any pecuniary penalty, to commit the offender to the common gaol, for any time not exceeding one calendar month, unless the penalty shall be sooner paid, and forthwith to report to one of His Majesty's principal secretaries of state the conviction of every offender under this act, and the punishment to which he is adjudged; no writ of *certiorari* shall be allowed to remove the proceedings. 6 *W.* 4, *c.* 11, *s.* 15.

As the act gives no form of conviction, the conviction will of course be in the ordinary form. The prosecution is always by government; and as their solicitor prepares the conviction, it is unnecessary here to give any forms.

Offences by aliens.] Aliens are punishable in this country for offences committed here, in precisely the same way as natural born subjects; if indicted, &c. it is no excuse whatever, that the act charged against them is not an offence in their native country. *R.* v. *Esop*, 7 *Car.* & *P.* 456.

AMENDMENT.

Upon an appeal against a justice's order, the court of quarter sessions may amend it in matters of form, but not in any matter of substance. 5 *G.* 2, *c.* 19, *s.* 1. This shall be treated of under the title "appeal."

Where a defendant is misnamed, or a wrong addition is given to him, in an indictment, he cannot now plead the misnomer in abatement as formerly; but if he object to it, the court shall order the indictment to be amended, according to the truth. 7 *G.* 4, *c.* 64, *s.* 19. *See post, title "Misnomer."*

The stat. 9 G. 4, c. 15, which allows of amendments in misdemeanors, where there is a variance between the indictment or information and any matter in writing or in print produced in evidence, gives the power of amending to judges at *nisi prius*, and courts of oyer and terminer and general gaol delivery only; and therefore I think it does not extend to the court of quarter sessions, and that the justices there cannot amend under it.

A magistrate may draw up his conviction in a more formal shape than it was at first drawn, before he returns it to the sessions or upon a *certiorari*; *R.* v. *Barker*, 1 *East*, 186. *Gray*

v. *Cookson and Clayton, per Lord Ellenborough. C. J.* 16 *East*, 21; but he cannot do even this with an order, *R.* v. *JJ. of Cheshire*, 5 *B.* & *Adolph.* 439, or warrant of commitment; *Hutchinson* v. *Lowndes*, 4 *B.* & *Adolph.* 118; nor can he remedy defects, by amendment or otherwise, in other proceedings.

ANATOMY.

See "Dead Bodies."

APOTHECARY.

Refusing to make up medicines prescribed, or doing so unfaithfully.] By stat. 55 G. 3, c. 194, s. 5, reciting that it is the duty of apothecaries "to prepare with exactness, and to dispense, such medicines as may be directed for the sick, by any physician, lawfully licensed to practise physic by the president and commonalty of the faculty of physic in London, or by either of the two universities of Oxford or Cambridge," it is enacted that "if any person using or exercising the art and mystery of an apothecary, shall at any time knowingly, wilfully, and contumaciously refuse to make, mix, compound, prepare, give, apply, or administer, or any way to sell, set on sale, put forth, or put to sale, to any person or persons whatsoever, any medicines, compound medicines, or medicinable compositions; or shall deliberately or negligently, falsely, unfaithfully, fraudulently, or unduly make, mix, compound, prepare, give, apply, or administer, or any way sell, set on sale, put forth, or put to sale, to any person or persons whatsoever, any medicines, compound medicines, or medicinable compositions, as directed by any prescription, order, or receipt, signed with his initials, in his own handwriting, of any physician so lawfully licensed to practise physic;" the party so offending, upon complaint made by the physician within twenty-one days, shall, upon conviction before any justice of the peace, ("unless such offender can show some satisfactory reason, excuse, or justification in this behalf,") forfeit 5*l.* for the first offence, 10*l.* for the second, and for the third offence he shall forfeit his certificate, and be incapable in future of exercising the art and mystery of an apothecary, and be liable to the same penalty as for acting without a certificate.

Acting as apothecary, &c. without a certificate.] If, after the 1st August, 1815, any person shall act or practise as an apothecary (except such as were then actually practising as such) without having obtained a certificate, he shall forfeit the sum of 20*l.*; and if any person, after the said first day of August, 1815, shall act as assistant to an apothecary, to compound and dispense medicines (except persons who were then acting as such, or who have actually served an apprenticeship of five years to an apothecary), without having obtained such certificate, he shall forfeit 5*l.* *Id. s.* 20; 6 *G.* 4, *c.* 133, *s.* 5. The act however does not extend to chemists or druggists; 55 *G.* 3, *c.* 194, *s.* 28; nor does it affect the rights or privileges of the universities, the royal college of physicians, or the royal college of surgeons. *Id. s.* 29.

Recovery of penalties.] Penalties exceeding 5*l.* are recoverable by action; 55 *G.* 3, *c.* 194, *s.* 26; those under 5*l.* by distress and sale under warrant from a justice of peace, or "in case sufficient distress shall not be found, or such forfeitures or penalties shall not be paid forthwith," the offender may be committed to the common gaol of the county, &c. for any time not exceeding one calendar month, unless the penalty, &c. and costs be sooner paid. *Id.* It is remarkable that the act made no provision for the recovery of a penalty of exactly 5*l.*; and therefore it was thought necessary, by stat. 6 *G.* 4, *c.* 133, *s.* 9, to enact that such penalty should be recovered in the same manner as penalties of 20*l.* by the statute of G. 3, which seemingly has the effect of taking the above offences out of the jurisdiction of justices altogether.

APPEAL.

In what cases.] An appeal to the court of quarter sessions lies only where it is given by the express words of some particular statute; a power of appealing cannot be implied. *R.* v. *JJ. of W. R. Yorkshire*, 1 *Q. B.* 325. On the other hand, where an appeal is given by the express words of a statute, the party shall not be deprived of it by any thing to be implied from other clauses in the act. See *R.* v. *JJ. of Salop*, 2 *B.* &. *Ad.* 145. *R.* v. *JJ. of Hants*, 1 *B.* & *Ad.* 654. An appeal is given, expressly, against orders of removal, by stat. 13 & 14 C. 2, c. 12, s. 2, and 3 W. & M. c. 11, s. 9, 10; against poor rates, by stat. 17 G. 2, c. 38, s. 4; against county rates, by stat. 57 G. 3, c. 94, s. 2; against the appointment of overseers, by

stat. 43 Eliz. c. 2, s. 6, and 17 G. 2, c. 38, s. 4; against the allowance or disallowance of overseers' accounts, by stat. 17 G. 2, c. 39, s. 4, and 50 G. 3, c. 49, s. 2; against summary convictions, in several particular instances, by the statutes creating the offences or giving the mode of summary prosecution; and in some other cases. Sometimes a difficulty occurs in determining whether the grievance, of which the party complains, is or is not within the appeal clause, where that clause, instead of describing the cases within it specifically, is couched in generic terms, such for instance as "if any person shall think himself aggrieved by anything done in pursuance of this act," or the like; and it then becomes a question of construction, upon a consideration of the words of the act, whether the particular case be fairly within the appeal clause or not. *Vide infra.*

By and against whom.] The party by whom the appeal is to be brought, is always designated by the appeal clause, either specifically, or in general terms, as the party grieved. It sometimes, however, becomes a question of difficulty, whether the party appealing be a party grieved, within the meaning of the statute. Where a licensed publican appealed, as a party grieved within the licensing act (9 G. 4, c. 61, s. 27), because the magistrates granted a licence to another person, who had set up a public house within a few yards of his house: the court held that he was not a party grieved within the meaning of the statute; those only who were immediately aggrieved by the act done, and not those who were consequentially injured, were within the meaning of this appeal clause. *R.* v. *JJ. of Middlesex*, 3 *B.* & *Ad.* 938, *and see R.* v. *Colbeck*, 12 *Ad.* & *El.* 161.

The appeal is deemed to be brought against those to whom notice of appeal is directed by the statute to be given. In many cases, however, when an appeal is given, it is not mentioned on whom the notice of appeal is to be served: in such a case, if the proceeding appealed against be the act of a justice of the peace, at the instance of some party who has an interest to support it, the notice of appeal may be directed to the party, (*see R.* v. *JJ. of Hants*, 1 *B.* & *Ad.* 654), or perhaps to both the party and the justice; but if it be the act of the justice, and not at the instance of a party, then it should seem that the notice of appeal must be given to the justice only, even although a party be really interested in the event, and the justice will be the only respondent. And in all cases where the notice of appeal is to be given to justices, if the order or conviction have been by two justices, the notice must be given to both. *R.* v. *JJ. of Cheshire*, 9 *Law J.* 89, *m.*, 11 *Ad.* & *El.* 139. *R.* v. *JJ. of Bedfordshire*, 11 *Ad.* & *El.* 134.

To what court.] The statute giving the appeal specifies the court to which the appeal must be made, usually the court of quarter sessions, holden for the county or borough within which, or by the justices of which, the act complained of was done. *See R.* v. *JJ. of Sussex*, 7 *T. R.* 107. *R.* v. *Coyston*, 1 *Sid.* 149. Where a statute gave the appeal to the next general or quarter sessions, and in London, where there are four intermediate sessions, between the quarter sessions, the court refused to try an appeal which had been entered at the quarter sessions, there having been sufficient time to enter it at the previous intermediate sessions: the court of King's Bench held that these intermediate sessions were not "general sessions" within the meaning of the statute; the quarter sessions are general sessions, and the term "general sessions" was used in the act to indicate the quarter sessions, in contradistinction to special sessions. *R.* v. *JJ. of London*, 15 *East*, 632. On the other hand, where in the borough of Carmarthen the sessions were holden, not quarterly, but merely twice in the year, the court held that an appeal might be entered at the next sessions, though not quarter sessions, under the same statute. *R.* v. *JJ. of Carmarthen*, 4 *B.* & *A.* 291. Formerly against orders of removal, made by the justices of a borough which was not a county of itself, the appeal must have been to the sessions of the county within which the removing parish was situate. 8 & 9 W. 3, c. 30, s. 6. *And see Id. s.* 8. 9 *G.* 1, *c.* 7, *s.* 7. *R.* v. *Wendover*, 2 *Salk.* 490. *R.* v. *Malden, Set.* & *Rem.* 10. So in corporations or franchises not having four justices, all appeals against rates, and against overseers' accounts, might be brought to the sessions of any county. 17 *G.* 2, *c.* 38, *s.* 5. And the same, in corporations or franchises not having more than six justices, nor having jurisdiction or authority over two or more whole parishes or wards. 1 *G.* 4, *c.* 36. But by the recent municipal corporation act, 5 & 6 W. 4, c. 76, s. 105, in all corporations within that act, to which His Majesty shall grant a separate court of quarter sessions, such court "shall be a court of record, and shall have cognizance of all crimes, offences, and *matters whatsoever* cognizable by any court of quarter sessions for counties in England, and the recorder shall have power to do all things necessary for exercising such jurisdiction notwithstanding his being sole judge, as fully as any such last-mentioned court:" and this is deemed to be a virtual repeal of the above statutes, and that appeals against orders of removal, *R.* v. *St. Edmunds, Salisbury*, 2 *Q. B.* 72, *R.* v. *JJ. of Suffolk*, *R.* v. *JJ. of Shropshire, and R.* v. *JJ. of Lancashire*, 2 *Q. B.* 85, and appeals against poor rates, must now in all cases be to the borough sessions, and not to the sessions of the county. But an appeal against a refusal by magistrates of a borough within the

municipal corporation act, to grant a party an ale licence, must be to the quarter sessions of the county, and not to the borough sessions; for by the 105th section of that act, the recorder is prohibited from interfering in matters relating to such licences. *R.* v. *Deane et al.*, 2 Q. B. 96. This subject, however, shall be more fully considered hereafter, under the title "Sessions."

Within what time.] The statute giving an appeal usually states within what time the appeal must be brought: if it direct the appeal to be to the next sessions, this is construed to mean the next practicable sessions, allowing a sufficient time for giving notice of appeal, *R.* v. *JJ. of Flintshire*, 7 *T. R.* 200. *R.* v. *JJ. of East Riding of Yorkshire, Doug.* 192 *R.* v. *JJ. of Sussex*, 15 *East*, 206, for making the necessary inquiries, *R.* v. *JJ. of Essex*, 1 *B.* & *Ald.* 210, and for other necessary preliminary steps; and if there be not a sufficient time before the first day of the sessions, the party is not bound to appeal to any adjournment of those sessions, although he may have time to do so, but he shall have until the next sessions to appeal. *R.* v. *JJ. of Surrey*, 1 *M.* & *S.* 479. If the appeal is to be brought within a certain limited time, the party is deemed to have the whole of that time within which to appeal, and until the next immediate sessions; *R.* v. *JJ. of Middlesex*, 6 *M.* & *S.* 279; if within a reasonable time, the question what is a reasonable time is for the sessions to determine, taking into consideration the circumstances of the particular case.

Notice of appeal.] Of the statutes which give an appeal, some expressly require that notice of appeal shall be given; others not. Those which make no mention of notice, usually require that the party intending to appeal, shall previously enter into a recognizance to enter his appeal and prosecute it with effect within a certain time; and his so doing is a good substitute for notice; for the parties interested in knowing whether an appeal is intended, can readily ascertain that fact, by inquiring of the justice whether the party has entered into the necessary recognizance. *R.* v. *JJ. of Kent*, 6 *M.* & *S.* 258. *R.* v. *JJ. of Essex*, 4 *B.* & *Ald.* 276. In some cases the statute requires both notice and recognizance. But where the statute requires notice or recognizance, such notice or recognizance is a condition precedent to the parties appealing, and nothing can dispense with it but the consent of the opposite party to waive the objection; indeed, the sessions have no authority to hear the appeal, unless the notice have been given or recognizance entered into, or unless both be given if both be required by the statute. *R.* v. *JJ. of Oxford-*

shire, 1 *M.* & *S.* 446. *R.* v. *JJ. of Lincolnshire*, 3 *B.* & *C.* 548. As the necessity of giving notice, or entering into recognizance, previously to appealing, is often not very well understood by the party appealing,—if the appeal be against a conviction or order of justices, it is the duty of the justice making the conviction or order to inform the party, not only of his right of appeal, but of the necessity of his previously giving notice or entering into a recognizance, where that is required. *See R.* v. *JJ. of Leeds*, 4 *T. R.* 583. *R.* v. *JJ. of W. R. Yorkshire*, 3 *M.* & *S.* 493.

Sometimes the statute, giving the appeal, requires the sessions to receive and enter it, although no notice or an insufficient one have been given, and to adjourn the appeal to the next quarter sessions, and then finally to determine the same. There is a clause to that effect in stat. 9 G. 1, c. 7, s. 8, relative to appeals against orders of removal; and hence the ordinary practice of sessions of moving to enter and respite such appeals. Afterwards, and within due time before the trial of the appeal, the notice required must be given.

The length of notice to be given, depends upon the statute giving the appeal, or on the practice of the court to which the appeal is given. If the statute give directions upon the subject, those directions must be pursued: a shorter notice would be bad, and a longer notice shall not be exacted by the practice of the court. If the statute merely require reasonable notice, it will be for the court to decide whether the notice given be, in point of time, reasonable or not. So, if the statute require notice, without stating that it shall be a reasonable notice, or indicating what length of notice shall be given, the notice must be given a reasonable time before the trial of the appeal; and the justices at sessions, in this case also, are to judge whether the notice given be reasonable or not. Each court of quarter sessions usually lays down a general rule upon this subject. If the statute require the notice to be in writing, it must be so unless the respondents dispense with it; *see R.* v. *JJ. of Leeds*, 4 *T. R.* 583; but, if it do not require it to be in writing, a parol notice is in all cases sufficient, and the sessions cannot, by any rule or adjudication of theirs, require it to be otherwise. *R.* v. *JJ. of Salop*, 4 *B.* & *Ald.* 626. So, if the statute require the notice to be personal, it must be so; but otherwise a personal service of it is not requisite. *R.* v. *JJ. of N. R. Yorkshire*, 14 *Law J.* 91, *m.*

In many cases the statute requiring the notice of appeal, requires that the notice shall also state the grounds upon which the appellant intends to support his appeal. This is required in different terms by different statutes; but they usually require the same thing in substance, namely, that he shall state in his notice the objections he has to the order or conviction,

&c. against which he intends to appeal. *See R.* v. *JJ. of Newcastle-upon-Tyne,* 1 *B.* & *Ad.* 933. If in such a case the grounds be not stated, or insufficiently stated, the court, unless the respondents waive the objection, are not bound to hear the appeal, but on the contrary should treat the case as if no notice of appeal had been given, and confirm the order or conviction. And if the grounds be stated, and sufficiently, the appellant, at the trial of the appeal, will be precluded from giving evidence of, or going into, and the sessions from examining or inquiring into, any other cause or ground of appeal, either extrinsic of the proceedings, or apparent on the face of them, (*R.* v. *Bromyard,* 8 *B.* & *C.* 240. *R.* v. *Withernwick,* 6 *Ad.* & *El.* 273), than what has been stated in the notice; and this whether it be expressly so enacted by the statute requiring the grounds to be stated or not. If, on the other hand, the grounds of appeal be stated, where the statute giving the appeal does not require it, any defect in stating them, cannot be objected to by the respondents, *R.* v. *JJ. of Westmoreland,* 10 *B.* & *C.* 226, nor can they object to the appellants going into other grounds of appeal than those stated in the notice; but if they be misled by the notice in these respects, the court may adjourn the appeal.

If there be any variance between the notice of appeal, and the conviction or order appealed against, still if the notice be sufficient to apprize the respondents of the nature of the appeal, and what is intended to be appealed against, so that they cannot have been misled by it, it will be deemed sufficient. *R.* v. *JJ. of Oxfordshire,* 4 *Q. B.* 177. *R.* v. *JJ. of Denbighshire,* 9 *Dowl.* 509.

Entry and adjournment.] Where the appeal, as is usual, is to the court of quarter sessions, it is in all cases entered with the clerk of the peace; but at what time it is to be entered depends upon the practice of each particular court of quarter sessions. Where the statute giving the appeal makes certain acts conditions precedent to the party's appealing, such as giving notice of appeal, entering into recognizance, &c. the appeal cannot legally be entered until after those conditions have been complied with. In appeals against orders of removal it is enacted by stat. 9 G. 1, c. 7, s. 8, that if it shall appear to the justices that reasonable time of notice was not given, then they shall adjourn the said appeal to the next quarter sessions. But unless the statute thus specially provide for the respiting of an appeal to a subsequent sessions, the sessions are not bound to respite or adjourn the hearing of it, nor is it by any means a matter of course for them to do so; they may do so in all cases if they will, *R.* v. *JJ. of Wilts,* 13 *East,* 352, and they usually do so where it appears to them necessary for the ends of justice.

Trial of appeal.] Usually the respondent begins: he it is who makes the charge, against which the appellant appeals, and he must prove it; it is not for the appellant to prove his innocence, until the charge against him has first been substantiated by the other party. In appeals against convictions this is universally true; but in some of the other appeals it is not always the case. In appeals against poor-rates, for instance, where the defendant objects to his being rated at all, the respondent begins; *R.* v. *Newbury*, 4 *T. R.* 475; where he objects to the sum at which he is rated only, as that he is overrated, or that other persons on the rate are underrated, the appellant begins; *Id. R.* v. *JJ. of Suffolk*, 6 *M.* & *S.* 57; and where he appeals upon both grounds, the respondents begin. *R.* v. *Topham*, 12 *East*, 546. So, in appeals against orders of removal, as it is now decided that if the appellants, in their grounds of appeal, do not deny the settlement set up by the respondents in the pauper's examination, they thereby admit it, and the respondents are not bound to prove it, *R.* v. *Hockworthy*, 7 *Ad.* & *El.* 492, in most courts of quarter sessions the appellants, in such a case, now begin, and prove any new settlement they may have set up in their grounds of appeal: but if the appellants have denied the settlement set up by the respondents in the examination, whether they set up any new settlement or not, the respondents begin. There must also necessarily be many other exceptions to the above general rule, arising out of the particular circumstances of each case, which must in a great measure be left to the good sense and discretion of the justices at session to regulate.

But whether the respondent or appellant begins, the respondent in most cases may, if he wish, call upon the appellant to prove his service of notice of appeal, before the case is at all gone into: in some cases the statute giving the appeal expressly requires this proof before the court proceed to hear and determine the appeal; and in most other cases the statute makes the notice of appeal a condition precedent to the party's appealing, and the appellant in such cases must, if required, prove his notice of appeal, to show that he is in a situation to appeal, within the meaning of the statute.

Upon notice of appeal being proved, or proof of it not being required, the counsel for the respondent, supposing him to have a right to begin, states his case to the court, and adduces evidence and witnesses to prove it; which witnesses may be cross-examined by the appellant's counsel, and afterwards re-examined by the counsel for the respondent. The counsel for the appellant next addresses the court, and either confines his observations to the case and proofs of the respondent, in which case the respondent has no right to reply; or, after observing upon the respondent's case and proofs, he may open a case for the appellant, and adduce evidence and witnesses in support

of it, which witnesses may be cross-examined and afterwards re-examined, as above-mentioned. In the latter case the counsel for the respondent has a right to the general reply; or before he replies he may call witnesses to disprove the case set up by the appellant, in which case the appellant's counsel has a right again to address the court (confining his observations, however, to the testimony of the witnesses so called by the respondents), and then the respondent's counsel is entitled to a general reply upon the whole case. *See R.* v. *JJ. of Carnarvon*, 4 *B.* & *A.* 86. The proceedings are the same, *mutatis mutandis*, where the appellant has the right of beginning.

As soon as the case has thus been closed on both sides, the court, by their chairman, or in boroughs the recorder, deliver the judgment, and either confirm the order, &c. or quash it. Any justices present who have a personal interest in the matter of appeal should refrain from voting, or taking any part directly or indirectly in it. *See Anon.* 1 *Salk.* 396. *R.* v. *Foxham Tithing*, 2 *Salk.* 607. *R.* v. *Great Chart*, *Burr. S. C.* 194, 2 *Str.* 1173. *R.* v. *Yarpole*, 4 *T. R.* 71. *R.* v. *Gudridge*, 5 *B.* & *C.* 459. *R.* v. *JJ. of Hertfordshire*, 14 *Law J.* 73, *m.* By stat. 16 G. 2, c. 18, s. 1, indeed, justices are empowered to act in all matters relating to the laws for the relief, maintenance, and settlement of the poor, for passing and punishing vagrants, for the repair of highways, and concerning parochial taxes, levies, or rates, notwithstanding they are rated to or chargeable with the taxes, levies, or rates, within any parish, township or place affected by such act. But the statute contains a proviso (s. 3), "that it shall not extend to authorize or empower any justice of peace for any county or riding at large, to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter or thing relating to any such parish, township or place where such justice of the peace is so taxed or chargeable as aforesaid."

Amendment.] By stat. 5 G. 2, c. 19, s. 1, reciting that great expenses had been occasioned by reason that the judgments and orders of justices had been quashed or set aside at the sessions, "upon exceptions or objections to the form or forms of the proceedings," without examining the truth and merits of the matter in question between the parties,—it is enacted, "that upon all appeals to be made to the justices of the peace at their respective general or quarter sessions to be holden for any county, riding, city, liberty or precinct within that part of Great Britain called England, against judgments or orders given or made by any justices of the peace as aforesaid, such justices so assembled at any general or quarter sessions shall, and they are hereby required from time to time,

within their respective jurisdictions, upon all and every such appeals so made to them, to cause any defect or defects of form that shall be found in any such original judgments or orders, to be rectified and amended, without any costs or charges to the parties concerned; and after such amendment made, shall proceed to hear, examine, and consider the truths and merits of all matters concerning such original judgments or orders, and likewise to examine all witnesses upon oath, and hear all other proofs relating thereto, and to make such determinations thereupon, as by law they should or ought to have done, in case there had not been such defect or want of form in the original proceeding." Where an order of removal described the place of settlement as a parish, instead of a vill, *R.* v. *Amluch*, 4 *B.* & *C.* 753, or a township instead of a parish, *R.* v. *Bingley*, 4 *B.* & *Ad.* 567, *n*, or ordered the removal from *A.* to *B.* instead of from *B.* to *A.*: *R.* v. *Harrow-on-the-Hill*, 2 *Bott*, 706: the court held that the justices at sessions might amend it, within the meaning of this statute. But where such an order described the justices as of a wrong county; *R.* v. *Chilverscoton*, 8 *T. R.* 178. *R.* v. *Moor Critchell*, 2 *East*, 66; and where the order omitted the adjudication of chargeability: *R.* v. *Great Bedwin*, *Burr. S. C.* 163, 2 *Str.* 1150: the court held that such misdescription and omission could not be remedied by amendment.

Costs.] Costs if granted, form part of the judgment of the court. It depends, however, upon the statute giving the appeal, whether the sessions can award costs or not: even in cases where they have such authority, they do not in all cases exercise it.

APPRENTICE.

1. *Apprenticeship in ordinary cases*, p. 80.
2. *Parish apprentices, not in unions*, p. 88.
3. *Parish apprentices in unions*, p. 111.
4. *Apprentices to the sea service*, p. 112.
5. *Complaints by masters of their apprentices*, p. 114.
6. *Complaints by apprentices of their masters*, p. 119.

1. *Apprenticeship in ordinary cases.*

Who may be bound, and to whom.] Any person, capable of executing a deed, may bind himself as an apprentice; and although he be under age at the time, he is bound by the indenture to serve his master during the time therein specified, *stat.* 5 *Eliz. c.* 4, *s.* 43. *R.* v. *Saltern*, 1 *Bott*, 617. *R.* v. *Arundel*, 5 *M.* & *S.* 257, at least, unless he become of age be-

fore the expiration of it, at which time it appears that he may avoid the contract if he will. *Ex p. Davis*, 5 *T. R.* 715. *See Ex p. Gill*, 7 *East*, 376.

So any person, capable of executing a deed, may take an apprentice; even a person under age may do so. *R.* v. *St. Petrox in Dartmouth*, 4 *T. R.* 196. But a married woman cannot take an apprentice, because her deed is altogether void, and not merely voidable. *R.* v. *Guildford*, 2 *Chit.* 284. It is not necessary, however, to the validity of an indenture of apprenticeship, that the master should exercise any trade, art, or mystery; where a girl was bound apprentice to a common day-labourer, to learn "the art and mystery of a housewife." the court held that the indenture was not invalid on that ground. *R.* v. *St. Margaret's, Lincoln, Burr. S. C.* 728.

Any apprenticeship, however, effected in contravention of an Act of Parliament, or by any contrivance in fraud of, or for the purposes of avoiding its express provisions, will be void altogether, and not merely voidable. And therefore where it was prohibited by statute to bind a child under eight years of age to a chimney-sweep, and a child of five years was notwithstanding bound, the court held the indentures void altogether, and not merely voidable. *R.* v. *Hipswell*, 8 *B.* & *C.* 466. So, where by stat. 10 G. 2, c. 31, s. 5, it was enacted that no waterman or waterman's widow should take an apprentice, unless they were housekeepers; and by sect. 4, that they should not take or have more than two apprentices; and a boy being in the service of one Twiss, a waterman, and it being desirable that he should be apprenticed, Twiss, who had already two apprentices, and therefore could not take him, had him bound to one Elizabeth Pearce, a waterman's widow, but who did not carry on the trade, nor was she a housekeeper; the boy, in fact, served Twiss alone under the indenture, Twiss paying Mrs. Pearce a sum quarterly for his services: the court held that the binding was clearly an evasion of the Act of Parliament, and was therefore void. *R.* v. *Gravesend*, 3 *B.* & *Ad.* 240. So, where during the time that it was prohibited by the stat. 5 Eliz. c. 4, that any person should exercise a trade unless he had served an apprenticeship for seven years to it, a boy was apprenticed to a tailor, nominally for seven years, but the indenture was ante-dated two years, for the purpose of enabling him to exercise his trade after a service of only five years, in fraud of the statute: the court held that as this was a plain evasion of the provisions of the statute, and done for the very purpose, the indenture was void, and no settlement was acquired by a service or inhabitancy under it. *R.* v. *Barmston, MS. H.* 1838. 3 *Nev.* & *P.* 167.

For what time.] The binding is usually for seven years.

Formerly it was required to be so, by stat. 5 Eliz. c. 4, s. 26, which however has since been repealed. But even whilst that statute was in force, a binding for less than seven years was holden to be voidable only, not void. *R.* v. *St. Nicholas in Ipswich*, 2 *Str.* 1066. *R.* v. *Evered*, *Cald.* 26. *Gray* v. *Cookson*, 16 *East*, 13. *R.* v. *Rainham*, 1 *East*, 531. So, where by a local act, the guardians of the poor at Canterbury were empowered to bind poor children apprentices for any number of years they should think fit, provided they should not be bound for a longer term than they should attain the age of 22 if boys, or 20 if girls; and a boy was apprenticed for a term which would not expire until after he should have attained the age of 22: the court held that the indenture was voidable only, not void, on that account. *R.* v. *St. Gregory*, 2 *Ad.* & *El.* 99. On the other hand, if, in ordinary cases, an infant is apprenticed for a time which will expire after he becomes of age, he may, it seems, put an end to the contract as soon as he becomes of age. *Ex. p. Davis*, 5 *T. R.* 715. *See Ex p. Gill*, 7 *East*, 376. But if a man of full age becomes an apprentice, he is thereby bound to serve the full time mentioned in the indenture.

How bound.] The binding must be by deed, that is to say, it must be under seal, and be signed and delivered by the parties, in the same manner as other deeds generally; otherwise no contract of apprenticeship will be created by it. *R.* v. *Ditchingham*, 4 *T. R.* 796. *R.* v. *Kingsweare*, *Burr. S. C.* 839, *R.* v. *All Saints, Hereford*, *Burr. S. C.* 656. *R.* v. *Highnam*, 1 *Bott*, 553. But whether the deed be indented or not is immaterial.

It must be executed by the apprentice, although he be an infant: no execution by his father or other person, who covenants for his faithfully serving, even although the apprentice assent, will be deemed equivalent to his own execution. *R.* v. *Cromford*, 8 *East*, 25. *R.* v. *Ripon*, 9 *East*, 295. *R.* v. *Arnesby*, 3 *B.* & *A.* 584. It is also usually executed by the father or some other friend of the apprentice, who covenants for the due service of the apprentice; but this is only for the security of the master, and is not essential to the validity of the indenture. Also, it or a counterpart is usually executed by the master: but this also has been holden not to be necessary to render the indenture valid; *R.* v. *St. Peter's-on-the-Hill*, 2 *Bott*, 393, 377; *and see R.* v. *Fleet*, *Cald.* 31; execution by the master is necessary only to give the apprentice or his father or friend a remedy against him, for any breach of the usual covenants on his part to teach and keep the apprentice. Where money was given by will to trustees, for the purpose of putting out poor boys apprentices, and the trustees having put a boy out, and given a premium of 20*l.* with him, the indenture stated them, as well as the boy and master, to be par-

ties, but it was in fact executed by the boy and master only, and not by the trustees: the court held the indenture to be valid notwithstanding. *R.* v. *Quainton*, 2 *M.* & *S.* 338. An indenture, by which an apprentice was bound for seven years, to serve one person for the first four years, and his own father for the last three, to learn two different trades, has been holden valid. *R.* v. *Louth*, 8 *B.* & *C.* 247. Where a boy, being desirous to be bound apprentice to one Robinson, a shoemaker, at *Longnor*, an attorney at some distance prepared the indenture for him, and affixed three seals to it as those of the boy, his father and Robinson: the indenture thus prepared was taken by the father to his son, and, neither of them being able to write, they got a third person to write their names opposite to two of the seals, and the pauper then took it to the master, who also executed it: the court held this to be a good execution of the indenture by the father and son. *R.* v. *Longnor*, 4 *B.* & *Ad.* 647.

Stamp.] By stat. 55 G. 3, c. 184, from 31st August, 1815, all former duties were to cease, and the stamp duties in the schedule to that act were to be levied in lieu thereof. The following is the part of the schedule relating to apprenticeship:—

Schedule, Part I.

Apprenticeship and Clerkship.—Indenture or other instrument or writing* containing the covenants, articles, or agreements for or relating to the service of any apprentice, clerk, or servant, who shall be put or placed to or with any master or mistress, to learn any profession, trade, or employment whatsoever: *except articles of clerkship to attornies and others, hereinafter specifically charged.*

	£	*s.*	*d.*
If the sum of money, or the value of any other matter or thing† which shall be paid, given, assigned, or conveyed, or be secured to be paid, given, assigned, or conveyed, to or for the use or benefit of the master or mistress, with or in respect of such apprentice, clerk, or servant, or both, the money and value of such other matter or thing shall not amount to 30*l*.....	1	0	0

* The words "other instrument or writing" here, are not to be considered as implying that an apprenticeship can be created without deed. They are here introduced merely for the purpose of preventing any evasion of the duty.

† These words, "other matter or thing," have been holden not to include clothes or washing, *R.* v. *Aylesbury*, 3 *B.* & *Ad.* 579, or diet, or lodging, *R.* v. *Leighton*, 4 *T. R.* 732. *R.* v. *Walton in le Dale*, 3 *T. R.* 515. *R.* v. *Portsea*, *Burr. S. C.* 834, to be found for the apprentice by his friends; nor to extend to a stipulation that the master should receive a portion of his earnings; *R.* v. *Wantage*, 1 *East*, 601; even where a sum of money was by agreement given to the master, to buy clothes for the apprentice, it was holden not to be within the statute, for it was no premium paid to the master. *R.* v. *Northowram*, *Burr. S. C.* 145.

	£	s.	d.
If the same shall amount to £30 and not amount to £50..	2	0	0
——— 50 ——— 100 ..	3	0	0
——— 100 ——— 200 ..	6	0	0
——— 200 ——— 300 ..	12	0	0
——— 300 ——— 400 ..	20	0	0
——— 400 ——— 500 ..	25	0	0
——— 500 ——— 600 ..	30	0	0
——— 600 ——— 800 ..	40	0	0
——— 800 ——— 1000 ..	50	0	0
——— 1000 or upwards	60	0	0
And where there shall be no such consideration as aforesaid, moving to the master or mistress, if the indenture or other instrument shall not contain more than 1,080 words.....	1	0	0
And if the same shall contain more than that quantity.....	1	15	0

Apprenticeship and Clerkship.—Indenture or other instrument in writing, containing the covenants, articles, or agreements, for or relating to the service of any such apprentice, clerk, or servant as aforesaid, who shall be put or placed to or with a new master or mistress, either by assignment, transfer, or turnover, or upon the death, absence, incapacity of the former master or mistress, or otherwise; or any writing whatever, whereby any such assignment, transfer, or turnover may be effectuated or ascertained—

Where there shall be any such valuable consideration as aforesaid, moving to the new master or mistress exclusive of any part of the consideration to the former master or mistress which may be returned or given, or transferred to the new master or mistress. } Such and the like duty in proportion to the amount or value of such new consideration only as is before charged on any original indenture of apprenticeship.

	£	s.	d.
And where there shall be no such new consideration: if the indenture or other instrument or writing shall not contain more than 1,080 words.....	1	0	0
And if the same shall contain more than that quantity.....	1	15	0
And where there shall be *duplicates* or *two parts* of any such indenture or other instrument or writing relating to any such apprentice, clerk, or servant, as aforesaid, each part shall be charged with the duty before mentioned, in all cases where the same shall not exceed thirty-five shillings; and where the same shall exceed that sum, only one part shall be charged with the said *ad valorem* duty, or duty in proportion to the consideration, and the other part shall be charged with a duty of.....	1	15	0

Note.—And the part bearing the *ad valorem* or higher duty shall belong to and be kept by the apprentice, clerk, or servant, or some person in his or her behalf, upon his or her being first placed out; and in case of any subsequent placing out by assignment or otherwise, the part bearing the *ad valorem* duty on that occasion (if any) shall belong to and be kept by the former master or mistress, or his or her representatives, or by the apprentice, clerk, or servant, or some person on his or her behalf; and in each of the said cases, the other part, bearing the lower duty hereby charged thereon, shall belong to and be kept by the original master or mistress, or the new master or mistress, as the case may be, and the same shall be respectively received in evidence accordingly.

Exemptions from the preceding and all other stamp duties.

Indentures or other instruments for placing out poor children apprentices, by or at the sole charge of any parish or township, or by or at the sole charge of any public charity, or pursuant to the Act of the 32nd year of His Majesty's reign, for the further regulation of parish apprentices.

And all assignments of such poor apprentices, provided there shall be no such valuable consideration as aforesaid given to the new master or mistress, other than what may have been, or shall be, given by any parish or township, or by any public charity.

As to these exemptions, it has been holden that money subscribed by the inhabitants of a parish, for the purpose of apprenticing the children brought up in the charity school of that parish, is a public charity within the meaning of the statute, and that the indenture in such a case did not require a stamp. *See R.* v. *St. Matthew, Bethnal Green, Burr. S. C.* 574. And the same, where a lady left a sum of money by her will, for the purpose of putting out the poor children of a particular parish, apprentices. *R.* v. *Clifton upon Dunsmore, Burr. S. C.* 697. And it is not necessary in such a case, that the trustees of the fund should be parties to the indenture. *R.* v. *Quainton*, 2 *M.* & *S.* 338. Also, where an assignment of a parish apprentice stated that 3*l.* was paid by the first master to the second, and the assignment was not stamped, it was holden that parol evidence was admissible to prove that this money was in fact paid by the overseers out of the parish money. *R.* v. *Llangunnor*, 2 *B.* & *Ad.* 616. But where the sum of 6*l.* was really paid by the first master to the second, and there was no assignment in writing, the court held it to be a nullity, and that the apprentice gained no settlement by service with the second master, even although the indenture itself was a parish indenture; the assignment should have been in writing and stamped, according to the provisions of the above stat. 55 G. 3, c. 184. *R.* v. *Fakenham*, 2 *Ad.* & *El.* 528.

By stat. 8 Ann, c. 9, s. 35, "the full sum or sums of money received, or in any wise directly or indirectly given, paid,

agreed, or contracted for during the term aforesaid, with or in relation to every such clerk, apprentice, and servant as aforesaid, shall be truly inserted and written in words at length, in some indenture or other writing which shall contain the covenants, articles, contracts or agreements relating to the service of such clerk, apprentice, or servant as aforesaid, and shall bear date upon the day of the signing, sealing, or other execution of the same:" under a penalty of double the sum paid or contracted for.

And by sect. 37, such indentures, &c. shall be presented, either at the head office, or to some collector of the stamp duties without the bills of mortality, and the duties thereon paid within two months after the execution thereof.

And by sect. 39, if the full sum received, &c. be not inserted, or if the duty be not paid within the time above prescribed, the indenture "shall be void, and not available in any court or place, or to any purpose whatsoever." Therefore, where at the trial of an appeal, an indenture of apprenticeship produced, upon which a premium had been paid, appeared to be correctly stamped, but it appeared also that the stamp had not been affixed to it until after the time prescribed by this statute: the court held it to be void on that account. *R.* v. *Chipping Norton*, 5 *B.* & *A.* 412. *R.* v. *Church Hulme*, 5 *B.* & *Ad.* 1029, *n.* But where no premium had been paid, the court held it sufficient that the indenture was stamped when produced in evidence, as it was not a case within this statute. *R.* v. *Preston*, 5 *B.* & *Ad.* 1028.

Where the father of the apprentice agreed to give a premium of 25*l.* and he procured 10*l.* of it to be paid out of the funds of a public charity, which 10*l.* however was alone mentioned as a premium in the indenture, and the trustees of the charity were not aware that the father was to pay the additional 15*l.*; the court held the indenture to be void in not setting out the full and true consideration, as required by the above statute of Anne. *R.* v. *Amersham*, 6 *Nev.* & *M.* 12. *S. P. R.* v. *Baildon*, 3 *B.* & *Ad.* 427. But where, before the binding, the intended master required a premium of 20*l.*, but the child's mother (who was then married, but not to the father of the child,) was desired by her husband to give no more than 10*l.*; she, however, privately, and without the privity or consent of her husband or child (although the master at the time was led to think otherwise) agreed to give the master something more than the 10*l.*; accordingly, upon the execution of the indenture, the husband paid the 10*l.*, which alone was mentioned in the indenture as a premium, and the wife in some time after paid the master the additional sum of two guineas and a half: the court held that, as the contract of the wife for the additional sum was invalid, it did not affect the validity of the indenture within the above statute of Anne. *R.* v. *Bourton-*

upon-Dunsmore, 9 *B.* & *C.* 872. Nor is a covenant by the apprentice to pay the master 2*s.* a week, the master at the same time paying him wages, a premium within the meaning of the act. *R.* v. *Bradford*, 1 *M.* & *S.* 151. Nor is a premium given by the parish or a public charity, within the meaning of the statute; for no stamp-duty is payable in such a case, and the statute extends only to indentures which require stamping. *R. Oadby*, 1 *B.* & *A.* 477. *R.* v. *Ide*, 2 *B.* & *Ad.* 866. Nor is a mere assignment of an apprentice within the statute, such assignment not being within the meaning of the words "indenture or other writing" in the 35th section above mentioned. *R.* v. *Ide*, 2 *B.* & *Ad.* 866. Also, if a greater sum be inserted in the indenture than is actually paid, the indenture will be valid notwithstanding; for the intention of the statute was to prevent frauds upon the revenue, and no fraud, of course, can arise from a larger sum being inserted. *R.* v. *Keynsham*, 5 *East*, 309.

Where a boy was bound by one indenture to serve two masters consecutively, in distinct trades, it was holden that one stamp was sufficient. *R.* v. *Louth*, 8 *B.* & *C.* 247. Where a premium of 20*l.* was agreed upon, but in order to avoid the payment of the duty on 20*l.*, and to pay a less duty, the sum was afterwards reduced to 19*l.* 19*s.* 6*d.*: it was holden that this did not affect the validity of the indenture. *Shepherd* v. *Hall*, 3 *Camp.* 180. But if the indenture be not duly stamped, according to the premium actually paid, it is void; *Cuerdon* v. *Leland*, 1 *Bott*, 541, 2 *Str.* 903; or at least it cannot be received in evidence.

Assignment.] It seems to have been holden that an apprentice in ordinary cases could not legally be assigned, unless there were some custom of the place, as in London, to warrant it. *Baxter* v. *Burfield*, 1 *Bott*, 696. It was afterwards holden that such assignment was not void, but voidable only. *Caistor* v. *Eccles*, 1 *Ld. Raym.* 683. But now it seems to be legalized, impliedly at least, by the legislature subjecting it to a stamp-duty. See as to the duty upon an assignment, *ante*, p. 84, *and see* *R.* v. *Fakenham*, 2 *Ad.* & *El.* 528, *ante*, p. 86.

Discharge of apprentice by consent.] An apprentice in ordinary cases, although under age, may be discharged from his apprenticeship, and the indenture be given up or cancelled, if all parties consent to it, *R.* v. *Weddington*, *Burr. S. C.* 766; *R.* v. *Titchfield*, *Id.* 511, and the dissolution of the contract be manifestly for the benefit of the infant. *R.* v. *Great Wigston*, 3 *B.* & *C.* 484. *R.* v. *Mountsorrell*, 3 *M.* & *S.* 497. But if the apprentice be of full age at the time, it is immaterial whether the dissolution of the contract be for his benefit or not. *See* *R.* v. *JJ. of Devonshire*, *Cald.* 32. The apprentice, however, is

not deemed to be discharged by the mere agreement between the parties, but the indenture must be actually given up or cancelled. *R.* v. *Skeffington*, 3 *B.* & *A.* 382. *See R.* v. *JJ. of Devonshire, supra, semb. cont.* And where an apprentice under age was impressed into the king's service, and then entered the service as a volunteer, with the consent of his master, but the indenture was not given up or cancelled, the court held that this did not put an end to the apprenticeship. *R.* v. *Hindringham*, 6 *T. R.* 577.

If the master become bankrupt, the issuing of the *fiat* against him operates as a discharge of the apprentice. 6 *G.* 4, *c.* 16, *s.* 49.

2. *Parish Apprentices, in Parishes not within an Union.*

Who may be bound.] By stat. 43 El. c. 2, after directing the churchwardens and overseers of every parish to raise a fund, for the purpose, amongst other things, of setting to work the children of those who should not be thought able to keep and maintain them (s. 1), it is enacted by sect. 5, "that it shall be lawful for the said churchwardens and overseers, or the greater part of them, by the assent of any two justices of the peace, to bind any such children as aforesaid to be apprentices, where they shall see convenient, until such man-child shall come to the age of [twenty-one years, 18 G. 3, c. 47,] and such woman-child to the age of one-and-twenty years or the time of her marriage, the same to be as effectual to all purposes as if such child were of full age, and, by indenture of covenant, bound him or herself." It is not necessary that the child should be chargeable to the parish, or even residing within it, to authorize the overseers to put it apprentice; it is sufficient if it be the child of a person settled in the parish, who the overseers think is not able to maintain it. *R.* v. *St. George, Exeter*, 3 *Ad.* & *El.* 373.

No child, however, shall be bound as a parish apprentice, until it shall have attained the age of nine years. 56 *G.* 3, *c.* 139, *s.* 7.

To whom.] Formerly, by stat. 43 El. c. 2, s. 5, the churchwardens and overseers of a parish might bind poor children apprentices, "where they should see convenient;" *supra;* which was understood to mean, that they might bind them to any persons, who, from their profession or manner of living, had occasion to keep servants, *Dalt.* c. 58, being either inhabitants of the parish, or occupiers of land in it, though residing elsewhere. *R.* v. *Clapp*, 3 *T. R.* 107. *And see* 3 *T. R.* 523. 7 *T. R.* 33. There was another statute also, 8 & 9 W. 3, c. 30, s. 5, which inflicted a penalty on persons refusing to take

such apprentices. But these several provisions are now repealed, by stat. 7 & 8 Vict. c. 101, s. 13. In a late case, it became a question whether a parish apprentice could legally be bound to a person, who, though an occupier in the parish, was resident out of the kingdom; but the court gave no judgment upon the point, deciding the case upon other grounds. *R.* v. *Spreyton*, 3 *B.* & *Ad.* 818. There is one case, however, of actual prohibition, which it is necessary to notice. By stat. 32 G. 3, c. 57, s. 12, whenever a master of a parish apprentice shall be convicted upon indictment for misusage, refusal of necessary provisions, cruelty, or other ill-treatment of or towards such apprentice, or shall have been found guilty thereof in any action brought at the suit of the party injured, it shall not be lawful for the churchwardens and overseers of the poor of any parish or place, to bind any other apprentice to such person; "but that whenever such person ought or would be compellable to take a parish apprentice, it shall and may be lawful for any two justices of the peace for the county, city, town, riding, division, or place where such person shall reside, upon application made to them by the churchwardens and overseers of the poor of such parish or place, to order and direct that such person shall pay into the hands of such churchwardens and overseers of the poor, some or one of them, a sum not exceeding the sum of 10*l.*, nor less than 5*l.*, for the purpose of binding out the child (intended to be bound) an apprentice, with the approbation of such two justices; and in case such person shall refuse to pay such a sum as aforesaid, that then it shall and may be lawful for such two justices, by warrant under their hands and seals, to levy the same by distress and sale of the goods and chattels of such person, together with the reasonable expenses of such distress. The master, however, may appeal to the next general quarter sessions; in which case, if the party give notice thereof within seven days after he has notice of the order, the distress shall not be made until after the sessions." *Id.*

Rules of the Poor Law Commissioners.] By the poor-law amendment act (4 & 5 W. 4, c. 76), s. 15, the commissioners are authorized to make rules, orders, and regulations for "apprenticing the children of poor persons:" and by s. 61, the justices who allow the indenture, shall previously ascertain whether such rules, &c. have been complied with, and shall certify the same at the foot of the indenture; and the indenture shall not be valid until this is done.

By stat. 7 & 8 Vict. c. 101, s. 12, the poor law commissioners may, by order under their hands and seal, prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions to be inserted in the indentures by which such children may be so bound as appren-

tices; and every master of such apprentice who wilfully refuses or neglects to perform any of such terms or conditions so inserted in any such indenture, shall be liable, upon conviction thereof before any two justices, to forfeit any sum not exceeding twenty pounds.

The following are the Rules made by the Poor Law Commissioners, and which, besides applying nearly to all the unions, apply to the following parishes:—Alston with Garrigill; East Stonehouse; St. George the Martyr, Southwark; St. George in the East; St. Giles, Camberwell; Leeds; Liverpool; St. Luke, Chelsea; St. Martin in the Fields; St. Mary, Lambeth; St. Mary Magdalen, Bermondsey; St. Mary, Rotherhithe; St. Matthew, Bethnal Green; Stoke upon Trent; Whittlesea St. Mary and St. Andrew; Great Yarmouth.

1. No child under the age of nine years shall be bound apprentice; and no child that cannot read and write his own name. No child shall be so bound to a person who is not a housekeeper, or assessed to the poor rate in his own name; or who is a journeyman, or a person not carrying on trade or business on his own account; or who is under the age of twenty-one; or a married woman.

2. No premium, other than clothing for the apprentice, shall be given upon the binding of any person above the age of fourteen, unless such person be maimed, deformed, or suffering from some permanent bodily infirmity, so that the nature of the work or trade which such person is fit to perform or exercise is restricted.

3. Where any premium is given, it shall consist in part of clothes supplied to the apprentice at the commencement of the binding, and in part of money, one moiety whereof shall be paid to the master at the binding, and the residue at the termination of the first year of the binding.

4. No apprentice shall be bound for more than eight years.

5. No person above fourteen years of age shall be so bound without his consent; and no child under the age of sixteen years shall be so bound without the consent of the father of such child,—or, if the father be dead or be disqualified to give such consent as hereinafter provided, or if such child be a bastard, without the consent of the mother, if living, of such child: Provided, that where the parent of such child, whose consent would be otherwise requisite, is transported beyond the seas, or is in the custody of the law, having been convicted of some felony, or for the space of six calendar months before the time of executing the indenture has deserted such child, or for such space of time has been in the service of Her Majesty or of the East India Company in foreign parts, such parent, if the father, shall be deemed to be disqualified as hereinbefore stated, and if it be the mother, no such consent shall be required.

6. No child shall be bound to a master, whose place of business, whereat the child is to work and live, shall be distant more than thirty miles from the place in which the child is residing at the time of the binding; unless in any particular case the poor law commissioners shall, on application to them, otherwise permit.

7. If the child, whom it is proposed to bind apprentice, be in the workhouse, and under the age of fourteen, the guardians shall require a certificate in writing from the medical officer of the workhouse as to the fitness in regard to bodily health and strength of such child to be bound apprentice to the proposed trade, and shall also ascertain from the master of the workhouse the capacity of the child for such binding in other respects.

8. If the child be not in the workhouse, but in the union or parish by the guardians of which it is proposed that it shall be bound, the relieving officer of the district in which the child shall be residing shall examine into the circumstances of the case, the condition of the child, and of his parents, if any, and the residence of the proposed master, the nature of his trade, the number of other apprentices, if any, then bound to him, and generally as to the fitness of the particular binding, and shall report the result of his inquiry to the board of guardians.

9. If the board of guardians think proper to proceed with the binding, they shall, when the child is under the age of fourteen, direct the relieving officer to take the child to the medical officer of the district, to be examined as to his fitness, in respect of bodily health and strength, for the proposed trade or business; and such medical officer shall certify in writing according to his judgment in the matter, which certificate shall be produced by the said relieving officer to the next meeting of the guardians.

10. If the child be residing in some other parish or union, the guardians who propose to bind him shall not proceed to do so unless they receive such a report as is required in article 8 from the relieving officer of the district in which such child is residing, and a certificate from some medical practitioner of the neighbourhood of the child's residence to the effect required in article 9.

11. When a premium is proposed to be given, in a case within the provision of article 2, the guardians shall require a certificate in writing of some medical practitioner, certifying that the person is maimed, deformed or disabled, to the extent specified in such article, and shall cause a copy of such certificate to be entered on their minutes before they proceed to execute the indenture.

12. When such certificate, as is required by articles 7, 9, and 10, is received, or in case from the age of the child no such certificate is required, the guardians shall direct that the child

and the proposed master, or some person on his behalf, and, in case the child be under the age of sixteen, the parent or person in whose custody such child shall be then living, shall attend some meeting of the board to be then appointed.

13. At such meeting, if such parties appear, the guardians shall examine into the circumstances of the case; and, if, after making all due inquiries, and hearing the objections (if any be made) on the part of the relatives or friends of such child, they shall deem it proper that the binding shall be effected, they may forthwith cause the indentures to be prepared, and, if the master be present, to be executed, but if he be not present, they shall cause the same to be transmitted to him for execution; and when executed by him, and returned to the guardians, the same shall be executed by the latter, and shall be signed by the child, as hereinafter provided.

14. If the proposed master reside out of the union, but in some other union or parish under a board of guardians, whether formed under the provisions of the first-recited Act, or of the Act of the twenty-second year of the reign of King George the Third, intituled "An Act for the better Relief and Employment of the Poor," or of any local Act, the guardians shall, before proceeding to effect the binding, communicate in writing the proposal to the guardians of such other union or parish, and request to be informed whether such binding is open to any objection, and if no objection be reported by such guardians within the space of one calendar month, or if the objection does not appear to the guardians proposing to bind the child to be sufficient to prevent the binding, the same may be proceeded with; and when the indentures shall have been executed, the clerk to the guardians who executed the same shall send notice thereof in writing to the guardians of the union or parish wherein the said apprentice is to reside.

15. The indentures shall be executed in duplicate, by the master and the guardians, and shall not be valid unless signed by the proposed apprentice, without aid or assistance, in the presence of the said guardians; and the consent of the parent, where requisite, shall be testified by such parent signing with his name or mark, to be properly attested, the foot of the said indenture, and where such consent is dispensed with under the provision contained in article 5, the cause of such dispensation shall be stated at the foot of the indenture, by the clerk to the said guardians.

16. The indenture shall contain mention of the place or places at which the apprentice is to work and live.

17. One part of such indenture, when executed, shall be kept by the guardians; the other shall be delivered to the master.

18. And we do hereby prescribe the duties of the master to whom such poor child may be apprenticed, and the terms

and conditions to be inserted in the said indentures, as follows :—

The master shall teach the child the trade, business, or employment set forth in the indenture, unless the board of guardians authorize the substitution of another trade or business.

He shall maintain the said child with proper food and nourishment.

He shall provide a proper lodging for the said child.

He shall supply to the said child one suit of proper clothing every year during the term of the binding.

He shall, in case the said child be affected with any disease or sickness, or meet with any accident, procure, at his own cost, adequate medical or surgical assistance, to be supplied by some duly qualified medical man, for such child.

He shall, once at least on every Sunday, cause the child to attend some place of divine worship, if there be any such within a reasonable distance, according to the religious persuasion in which the child has been brought up, so, however, that no child shall be required by the master to attend any place of worship to which his parents or surviving parent may object, nor, when he shall be above the age of sixteen, any place to which he may himself object.

Where such parents or parent or next of kin shall desire it, he shall allow the said child, while under the age of sixteen, to attend any Sunday or other school which shall be situated within the same parish or within two miles distance from his residence, on every Sunday, and, if there be no such school which such child can attend, shall, at some reasonable hour on every Sunday allow any minister of the religious persuasion of the child to have access to such child for the purpose of imparting religious instruction.

Where the apprentice continues bound after the age of seventeen years, the master shall pay to such apprentice, for and in respect of every week that he duly and properly serves the said master, as a remuneration, a sum to be inserted in the indenture, or to be agreed upon by the guardians and the said master when that time arrives, or, if they cannot agree, to be settled by some person to be then chosen by the said master and the said guardians, and, until such sum be agreed upon or settled, not less than one fourth of the amount then commonly paid as wages to journeymen in the said trade, business, or employment.

The master shall, by himself or by his agent, produce the apprentice to the board of guardians by whom such apprentice was bound, at their ordinary meeting next pre-

ceding the end of the first year of the binding, and before the receipt of the remainder of the premium, if any be due, and shall in like manner produce the said apprentice at some one of their ordinary meetings, to be held at or about the middle of the term, and whenever afterwards required to do so by the said guardians. Provided that if the apprentice reside out of the union, by the guardians whereof he was bound, the apprentice shall be produced, as hereinbefore directed, to the board of guardians of the union or parish, as described in article 14, in which the apprentice may be residing.

The master shall not cause the said apprentice to work or live more than ten miles from the place or places mentioned in the indenture, according to article 16, without the leave of the guardians so binding him, to be given under their common seal.

19. These duties of the master shall be enforced by covenants and conditions to be inserted in the said indenture so to be executed by him.

20. The master shall also covenant not to assign nor to cancel the indenture without the consent of the guardians, under their common seal, previously obtained, under a penalty to be specified in the said covenant, and to pay to the said guardians all costs and expenses that they may incur in consequence of the said apprentice not being supplied with medical or surgical assistance by the master, in case the same shall be at any time requisite.

21. The indenture shall be made subject to the following provisoes:—

That if the master take the benefit of any Act for the relief of insolvent debtors, or be discharged under any such Act, such indenture shall forthwith become of no further force or effect.

That if, on a conviction for a breach of any one of the aforesaid covenants before a justice of the peace, in pursuance of the provisions of the statute in such case made and provided, the guardians who may be parties to the said indentures shall declare by a resolution that the indenture shall be determined, and shall transmit a copy of such resolution, under the hand of their clerk or the person for the time being acting as such, by the post or otherwise, to the said master, such indenture shall, except in respect of all rights and liabilities then accrued, forthwith become of no further force or effect.

22. Whenever the word *parish* is used in this order, it shall be taken to include any place maintaining its own poor, whether parochial or extra-parochial; and the word *guardians* shall include the select vestry of the parish of *Liverpool*.

23. Whenever in describing any person or party, matter or

thing, the word importing the singular number or the masculine gender only is used in this order, the same shall be taken to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there be something in the subject or context repugnant to such construction.

24. Whenever in this order any article is referred to by its number, the article of this order bearing that number shall be taken to be signified thereby.

25. Provided that nothing herein contained shall apply to the apprenticing of poor children to the sea service.

Previous inquiry, and order of justices.] "Before any child be bound apprentice by the overseers of any parish, township, or place, such child shall be carried before two justices of the peace of the county, riding, division, or place, wherein such parish, township, or place shall be situate, who shall inquire into the propriety of binding such child apprentice to the person or persons to whom it shall be proposed by such overseers to bind such child, and such justices shall particularly inquire and consider whether such person or persons reside, or have his or her or their place or places of business within a reasonable distance from the place to which such child shall belong, having regard to the means of communication between such places, or whether any circumstances shall make it fit, in the judgment of such justices, that such child should be placed apprentice at a greater distance, and if the father or mother of such child shall be living, and shall reside in or near the place to which such child shall belong, such justices shall (if they see fit) examine such father or mother, or either of them, and shall particularly inquire as to the distance of the residence or place of business of the person or persons to whom it shall be proposed to place such child, and the means of communication therewith; and such justices shall also inquire into the circumstances and character of such person or persons." 56 *G.* 3, c. 139, s. 1.

"And if such justices shall, upon such examination and inquiry, think it proper that such child should be bound apprentice to such person or persons, such justices shall make an order, declaring that such person or persons is or are fit person or persons to whom such child may be properly bound as apprentice, and shall thereupon order that the overseer or overseers of the place to which such child shall belong shall be at liberty to bind such child apprentice accordingly, which order shall be delivered to such overseer or overseers as the warrant for binding such child apprentice as aforesaid, and such order shall be referred to, by the date thereof and the names of the said justices, in the indenture of apprenticeship of such child." *Id.*

"Provided always, that no such child shall be bound apprentice to any person or persons residing or having any establishment in trade, at which it is intended that such child shall be employed, out of the same county, at a greater distance than forty miles from the parish or place to which such child shall belong, unless such child shall belong to some parish or place which shall be more than forty miles from the city of London, in which case it shall be lawful for the justices, who shall authorize the apprenticing of such child, to make a special order for that purpose, in which order such justices shall distinctly specify the grounds on which they shall think fit to allow of the apprenticing of such child to a person or persons residing or having an establishment in trade, at a greater distance than forty miles from the parish or place to which such child shall belong." *Id.* This distance, however, is not to have reference to cities or boroughs which are counties of themselves, but to the county in which such city or borough is situate. *Id. s.* 4. Where the binding parish is within a city, borough, or town corporate, the indenture must be allowed by a justice of peace of such city, &c., and a justice of peace of the county in which the same is situate; 4 & 5 *W.* 4, *c.* 63, *s.* 3; and it should seem that in such a case, this inquiry and order should be made by the same justices. Before the above statute, 56 G. 3, c. 139, overseers might have bound a parish apprentice to a person residing or carrying on trade at any distance out of the county. *Per Cur. R.* v. *St. George, Exeter*, 3 *Ad.* & *El.* 373.

The following may be the form of the order:—

Leicestershire to wit: Whereas J. N. and J. S., overseers of the poor of the parish of A., in the county of Leicester, have this day brought before us, J. P. and N. P., esquires, (two of Her Majesty's justices assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed,) one C. D., a poor male [or *female*] *child, of the age of —— years, having a settlement in the said parish, whose parents are not able to keep and maintain him, and the said J. N. and J. S., as such overseers as aforesaid, now propose to us the said justices, that they shall bind the said C. D. apprentice to one E. F., of the parish of ——, in the county of ——, shoemaker, and residing within the distance of* 40 *miles from the parish or place to which the said C. D. belongs* [or *residing* or *having an establishment in trade at which it is intended that the said C. D. shall be employed, out of the said county, and at a greater distance than* 40 *miles from the parish of A., to which the said C. D. belongs, and the said parish of A. being more than* 40 *miles from the city of London,*] *with him the said E. F. to dwell and him to serve, until the said C. D. shall attain the age of* 21 *years* [adding if the apprentice be a female, "*or until the time of her marriage,*

which shall first happen,"] *according to the statutes in such case made and provided. And whereas we the said justices have made the necessary examination and inquiries directed and required by the statute in such case made and provided, and upon such examination and inquiries think it proper that such child shall be bound apprentice to the said E. F.* [adding, if he live out of the county and above 40 miles from the child's parish, *"because we find that"*—and then specifying their reasons for apprenticing the child out of the county, &c.]: *We, therefore, do hereby declare that the said E. F. is a fit person to whom the said C. D. may be properly bound an apprentice, and hereupon we order that the overseers of the said parish of A. shall be at liberty to bind the said C. D. apprentice accordingly. Given under our hands and seals, at ——, this —— day of ——, in the year of our Lord ——.*

The indenture.] In this case the indenture is between the churchwardens and overseers, or the major part of them, of the one part, and the master, of the other part; the child is no party to the indenture, *R.* v. *St. Nicholas, in Nottingham*, 2 *T. R.* 726. *R.* v. *Woolstanton*, 1 *Bott*, 610, but he must sign it, as required by the 15th rule, *ante*, p. 92. Also, it is not necessary that the father or other friend of the apprentice should be a party; but the parent must sign the indenture, to indicate his assent to it, (*Rule* 15, *ante*, p. 92), where such consent is not dispensed with by Rule 5, *ante*, p. 90. The master, however, must now be a party; *Rule* 15; although this formerly was not necessary to the validity of a parish indenture. *R.* v. *Fleet, Cald.* 31.

As to its execution by the parish officers: in unions, it is executed by the guardians, under their seal of office. In other cases, it must be executed by the major part of the churchwardens and overseers, 43 El. c. 2, s. 5, considered together as one body: as for instance, if there be two churchwardens and two overseers, it must be executed by two overseers and one churchwarden, or two churchwardens and one overseer. Or if by custom there be but one churchwarden in a parish, an indenture executed by him and the overseers, or the majority of them, will be good; *R.* v. *Earl Shilton*, 1 *B.* & *A.* 175; and the like as to indentures executed before the 28th May, 1821, where one churchwarden or chapelwarden alone may have been appointed, although formerly two were usually appointed for the same place. 1 & 2 *G.* 4, *c.* 32, *s.* 1. So, indentures executed by persons appointed and acting in the double capacity of churchwardens and overseers (which is often the case in small parishes) are as valid as if they were executed by persons severally appointed to and executing these offices; 51 G. 3, c. 80, s. 1. *R.* v. *St. Margaret's, Leicester*, 2 *B.* & *A.* 200; although formerly holden otherwise. *R.* v. *All Saints, Derby*,

13 *East*, 143. Where a parish is divided into several townships or hamlets, &c., each maintaining its own poor separately, if there be no churchwardens or chapelwardens appointed for such a township or hamlet, and the churchwardens of the parish do not act as such, an indenture executed by the overseers only, or the majority of them, is deemed valid. *R.* v. *Nantwich*, 16 *East*, 228. But if a churchwarden or chapelwarden have been appointed for a township, hamlet, or chapelry, he is to be deemed one of the body, by the majority of whom the indenture must be executed; *see R.* v. *Hinkley*, 12 *East*, 361; and an execution by such churchwardens or chapelwardens shall be deemed as valid as if it were by the churchwardens of the parish, in which such township, hamlet, or chapelry is situate. 54 *G.* 3, *c.* 107, *s.* 2. So, if the churchwardens of the parish act as churchwardens or chapelwardens of a township, hamlet, or chapelry within it, maintaining its own poor, although sworn in only as churchwardens of the parish, and not as churchwardens or chapelwardens of the township, &c., an indenture executed by them [and the overseers of the township, hamlet, or chapelry, or the majority of them,] shall be deemed as good and valid as if they had been sworn in as churchwardens or chapelwardens of such township, hamlet, or chapelry. *Id. s.* 1.

By stat. 3 & 4 W. 4, c. 63, s. 2, reciting that by several acts of parliament the directors, guardians, and other officers of incorporated hundreds, parishes, and other districts, are authorized to bind poor children apprentices, and that they had bound out children by indentures, to which such directors, &c. were the binding parties, by their description of directors, &c. and had executed the same by affixing thereto their corporate seal, and reciting also that some doubts had been entertained of the validity of the indentures so executed: it was declared and enacted that all such indentures already so executed, or thereafter to be so executed, should be deemed good and valid, *See R.* v. *Lutterworth*, 3 *B.* & *C.* 487. *Stat.* 20 *G.* 3, *c.* 36, *s.* 1.

The indenture of a parish apprentice differs in some respects from an indenture of apprenticeship in ordinary cases. In the first place, the parish officers, and not the child, are the binding parties, as has been already mentioned; the indenture recites that the binding is by and with the consent of the justices whose names are thereunto subscribed, and by virtue and in pursuance of an order of justices, taking care to set out the date of the order, otherwise the indenture will be void. 56 *G.* 3, *c.* 139, *ss.* 1, 5. *R.* v. *Bawbergh*, 2 *B.* & *C.* 222. Also annexed to the master's covenant for maintenance, there shall be a proviso to this or the like effect: "provided always, that the said last-mentioned covenant on the part of the said F. M. (*the master*) his executors and administrators to be done and performed, shall continue and be in force for no longer time

than for three calendar months next after the death of the said F. M., in case he the said F. M. shall happen to die during the continuance of such apprenticeship, according to the provisions of an act passed in the thirty-second year of the reign of King George the Third, intituled, 'an act for the further regulation of parish apprentices;'" or if such proviso be omitted, still the covenant shall not be deemed to be binding for a longer time than three calendar months after the death. 32 G. 3, c. 57, s. 1, *and sch. A.* As to the other covenants and provisoes to be inserted in the indenture, see Rules 18, 19, 20, & 21, *ante*, p. 92, &c.

Blank forms of these indentures may be had of the publishers of this work.

As to the period for which the children may be bound: a male child shall be bound "for no longer term than till such child shall come to the age of twenty-one years;" 18 G. 3, c. 47; and a female child, till she come "to the age of one and twenty years, or the time of her marriage." 43 El. c. 2, s. 5. They may, however, be bound for a less time. *R.* v. *Chalbury*, 1 *Bott*, 643, 610. And even if they be bound for a longer time, *see R.* v. *Gregory*, 2 *Ad.* & *El.* 99, or for an indefinite time, *R.* v. *Woolstanton*, 1 *Bott*, 610, or if a female child be bound until the age of 21, without saying, "or until her marriage:" *R.* v. *St. Petrox, Burr. S. C.* 248, 1 *Wils.* 96: in these and the like cases the indenture is not void, but voidable only.

Indenture, how allowed and executed.] By stat. 43 El. c. 2, s. 5, the binding of parish apprentices was required to be with the assent of two justices of the peace. By stat. 56 G. 3, c. 139, s. 1, the justices are directed to make a previous inquiry as to the propriety of binding the child to the party intended, and then to make an order sanctioning the binding, which has been already noticed, *ante*, p. 95; and "after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship, before the same shall be executed by any of the other parties thereto." 56 G. 3, c. 139, s. 1. If the parish be within a city, borough, or town corporate, the indenture shall be allowed by two justices, one of the city, &c. the other of the county. 3 & 4 W. 4, c. 63, s. 3. This allowance is written upon the indenture, and signed and sealed by the justices. *See R.* v. *Stoke Damerel*, 7 *B.* & *C.* 563. *R.* v. *St. Paul, Exeter*, 10 *B.* & *C.* 12. And this being a judicial, and not merely a ministerial act, it must be done by the justices together; *R.* v. *Hamstall, Ridware*, 3 *T. R.* 380; but where it was first signed by one justice, the other not being present, and afterwards while both were present it was signed by the second, this was holden to be sufficient. *R.* v. *Warwick*, 8 *T. R.* 455. Where the parish is within a city, borough, or town corporate, as the indenture in that case must

be allowed by a justice of such city, &c., and a justice of the county in which the same is situate, 3 & 4 W. 4, c. 63, s. 3, *supra*, it should seem that the allowance in such a case may be separate, by each magistrate. The form of the allowance may be thus :—

"*We, whose names are hereunder written and seals affixed, justices of the peace in and for the county of —— aforesaid, whereof one is of the quorum, do consent to the binding of A. B. to be an apprentice, according to the intent and meaning of this indenture: and we sign and seal this our allowance of such indenture of apprenticeship, before the same hath been executed by any of the other parties thereto. Given under our hands and seals this —— day of ——, in the year of our Lord ——.*" Also, as has already been noticed, *ante*, p. 89, the justices having first ascertained that the rules made by the poor-law commissioners, upon the subject of binding parish apprentices, have been complied with, shall certify the same at the foot of the indenture. 4 & 5 *W.* 4, *c.* 76, *s.* 61.

The above is the mode of allowance, where the child is bound to a master in the same county in which the binding parish is situate. But by stat. 56 G. 3, c. 139, s. 2, in all cases where the residence or establishment of business of the intended master shall be within a different county or jurisdiction of the peace from that in which the binding parish is situate, or wherein the justices of the latter county, &c. have not jurisdiction, the indenture must be allowed, not only by two justices of the county or district in which the binding parish is situate, but also by two justices of the county or district within which the child shall be intended to serve, such last-mentioned justices not being engaged in the same business, employment, or manufacture as the intended master. Or, if it have been or shall be allowed by two justices, acting as well for the county or district in which the binding parish is situate, as for that in which the child is intended to serve, it will be sufficient. 3 & 4 *W.* 4, *c.* 63, *s.* 1. Where the justices of the county in which the child was intended to serve, refused to allow it, because the master might have an apprentice from among the poor boys of his own parish, which would suit him better, an application was made to the court for a mandamus, on the ground that the justices could only inquire into the fitness of the master, and not into the propriety of the binding in other respects; but the court held that the justices had a general discretion given them by this statute to consider the propriety of the binding; and as they had exercised it, the court would not interfere. *R.* v. *Mills et al.*, 2 *B.* & *Ad.* 578.

Also, by stat. 56 G. 3, c. 139, s. 2, notice shall be given to

the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district, within which such parish or place shall be, shall allow such indenture; and such notice shall be proved, before such justice shall sign such indenture, unless one of such overseers shall attend such justice and admit such notice. And this has been holden to extend, not only to cases where a child is apprenticed into a different county or jurisdiction from that in which the binding parish is situate, but to all cases of a binding out of the parish or township; and therefore, if a child be bound as a parish apprentice by the parish or township of A., to a master in the parish or township of B., a previous notice must be given to the overseers of B., although A. and B. be within the same county, and the same justices have jurisdiction in both. *R.* v. *Threlkeld*, 4 *B.* & *Ad.* 229.

The allowance by the two justices of the county in which the child is to serve, is in the same form as that by the justices of the county in which the binding parish is situate, as given *ante*, p. 100, except that in this case, and indeed in all where previous notice to the overseer is requisite, it is usual, after stating the consent, to allege the notice thus: "*it having been proved upon oath before us* [or *admitted before us by the overseers of the said parish of B.*] *that due notice in writing has been given by the overseers of the poor of the parish of A. to the overseers of the poor of parish of B. of such binding being intended;*" and we sign and seal, &c.

Allowance, in what cases, where the parish is not party to the indenture.] By the same statute (56 G. 3, c. 139, s. 11,) after reciting that the salutary provisions of stat. 43 El. c. 2, are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of the peace,—it is enacted that "no indenture of apprenticeship, by reason of which any expense whatever shall at any time be incurred by the public parochial funds, shall be valid and effectual, unless approved of by two justices of the peace, under their hands and seals, according to the provisions of the said Act and of this Act." The allowance in this case must be under seal, or the indenture will be void; *R.* v. *Stoke Damarel*, 7 *B.* & *C.* 563; but the allowance under the first section of the statute, *ante*, p. 99, need not be under seal, *R.* v. *St. Paul, Exeter*, 10 *B.* & *C.* 12, although in practice it is so, and it may be prudent to continue that practice.

The "public parochial funds" mentioned in the above section, mean either funds contributed by the parishioners generally, or funds applicable to the general purposes of the relief

of the poor, and not funds contributed by individuals for a specific purpose, such as a devise of lands or bequest of money, for the purpose of putting out poor children apprentice or the like. *R.* v. *Halesworth*, 3 *B.* & *Ad.* 717; *and see R.* v. *St. Peter's, Hereford*, 1 *B.* & *Ad.* 960. And even where in such a case, the overseer also furnished the boy with a full suit of clothes, out of the parochial funds, which would not all have been given, but in prospect of his being bound, but no stipulation to that effect had been made with the master: the court held that the clothes were not an expense incurred by the public parochial funds, within the meaning of the statute; and Parke, J., said that the expense so incurred must be such as to make it a case of binding directly or indirectly by the parish officers. *R.* v. *Quainton*, 1 *Ad.* & *E.* 133. But where, before the execution of the indenture, the master said that the pauper should have some better clothes; and the boy thereupon went to the parish officers, who agreed to give him for that purpose 2*l.*, on the execution of the indenture, and 2*l.* more at the end of the year; the overseers were present at the execution of the indentures, and were attesting witnesses to it, and at the same time they paid the master's wife 2*l.*, who laid them out in clothes for the pauper, and the remaining 2*l.* they paid to the pauper at the end of the year: the court held this to be a case within the meaning of the act; the money was laid out by reason of the indenture, for the master, before he would take the apprentice, required it to be so laid out; and as the money was paid by the parish officers, it must be presumed to have been paid out of the parish funds. *R.* v. *Mattishall*, 8 *B.* & *C.* 733. Where the apprentice was 21 years of age at the time of the binding, the court held it not to be a case within the statute, as that relates to the apprenticing of children only. *R.* v. *St. John, Bedwardine*, 5 *B.* & *Ad.* 169.

As to the putting out of apprentices where money has been bequeathed or given for that purpose, *see stat.* 7 Jac. 1, c. 3.

Defects in the binding, allowance, &c.] "No settlement shall be gained by any child, who shall be bound by the officers of any parish, township, or place, by reason of such apprenticeship, unless such order shall be made, and such allowances of such indenture of apprenticeship shall be signed, as hereinbefore directed." 56 G. 3, c. 139, s. 5. *See ante*, p. 95.

And by sect. 6, in case any overseer shall bind an apprentice to any person, without having obtained such order and such allowances as hereinbefore required, and in case any person shall receive any such apprentice, as so bound, without such order and allowances having been first obtained, the said overseer and the said person shall each respectively forfeit the

sum of 10*l.* for each apprentice so bound, to be recovered as the penalties therein given are directed to be recovered. *See Id. s.* 12—17.

Registry of parish apprentices.] The overseers shall keep a book, and enter therein the name of every child bound out by them as an apprentice, with other particulars; which book shall be laid before the justices, at the time the indenture is laid before them for their assent, and they are to sign the entry. 42 G. 3, c. 46, s. 1. And if the overseers shall fail to keep such book, or make such entry, or if they destroy the book, or deface or alter any entry in it, or make any false entry, or fail to produce it before the justices, or if they shall not deliver such book to their successors in office, or the successors refuse to receive it,—if convicted of such offence before two justices, they shall forfeit a sum not exceeding 5*l.* to be recovered by distress. *Id. s.* 2. It shall be lawful for any person, at all reasonable hours, to inspect such book in the hands of the overseer, and to take a copy of any entry, on payment of 6*d.*; and every such book shall be and be deemed to be sufficient evidence in all courts of law whatsoever, in proof of the existence of such indentures, and also of the several particulars specified in the said register respecting such indentures, in case it shall be proved to the satisfaction of such court that the said indentures are lost or have been destroyed. *Id. s.* 3.

Master removing.] By stat. 56 G. 3, c. 139, s. 8, "If any person or persons to whom any child shall be bound apprentice by the overseers of the poor of any parish or place, shall after the said 1st day of *October* remove his, her, or their residence or establishment of business, out of the same county, or 40 miles from the parish or place wherein the same was when such child was bound apprentice, such person or persons shall at least 14 days previous to such removal, give a written notice thereof to the churchwardens or overseers of the poor of the place where such apprentice shall then reside, unless such person or persons shall reside in such place under certificate; and in that case such persons shall give the like notice to the churchwardens or overseers of the poor of the place where such apprentice shall then be legally settled; and which churchwardens and overseers, and also the master or masters, mistress or mistresses of such apprentice, shall cause such apprentice to appear before two of His Majesty's justices of the peace for the county or district within which such apprentice shall be then serving, who shall inquire whether it may be fit and proper that such apprentice should continue in the service of such person or persons, or be discharged therefrom, or bound or assigned over to any other person or per-

sons; and shall thereupon make order, either for the continuance of such apprentice with such person or persons, or for the discharge of such apprentice, or for the binding or assigning of such apprentice to any other person, as to them in their discretion shall seem meet; and if they shall see fit, shall also require the person or persons so giving notice of removal, to pay the amount of the premium received with such apprentice, or such portion of it as to them shall seem meet, for the expense of assigning or binding such apprentice to any other person, to be approved by the said justices: and the person or persons to whom such apprentice shall be so bound or assigned, shall be subject to the same rules and regulations as the person or persons to whom such apprentice shall be originally bound: And in case any such master or masters, mistress or mistresses, shall remove as aforesaid, and shall take any such apprentice to any other place, without such order as aforesaid, or shall wilfully abandon and leave any such apprentice, without giving such notice as aforesaid, every person so offending, shall forfeit the sum of 10*l.* for every such apprentice, to the churchwardens and overseers of the poor of the parish, township or place, wherein, at the time of such removal or taking, the apprentice shall have been legally settled, for the use of the poor of the same parish, township, or place; provided an information shall be exhibited for such offence within three calendar months next after the commission of the same."

The conviction for this offence, may be in this form:—

Berkshire, to wit: Be it remembered that on —— C. D. is convicted before us, J. P. and L. M. esquires, two of Her Majesty's justices of the peace for the county of Berks, upon the information of A. B., for that the said C. D., being a person to whom a child named J. Y. had been before then bound apprentice by the overseers of the poor of the parish of ——, and whilst the said J. Y. was so bound to him as aforesaid, did, on the —— day of —— last past, and within three calendar months next before the information in this behalf was exhibited, [*remove his residence to M. in the county of N. being* 40 *miles and upwards from the parish wherein he the said C. D. resided, when the said J Y. was so bound apprentice as aforesaid,* (see 56 G. 3, c. 139, s. 8,) *and took the said J. Y. to M. aforesaid, without an order in that behalf being made by two justices of the peace, either for the continuance of such apprentice with the said C. D., or for the discharge of such apprentice, or for the binding or assigning of such apprentice to any other person;*" or "*did wilfully abandon and leave the said J. Y., without giving a written notice to the churchwardens or overseers of the poor of the said parish, in which the said J. Y. then resided, of his the said C. D.'s intention to remove his residence or estab-*

lishment of business, pursuant to the statute in that case made and provided] . *contrary to the form of the statute made in the fifty-sixth year of the reign of His Majesty King George the Third, intituled 'An Act to regulate the binding of parish apprentices;' and for which offence we do adjudge that the said C. D. shall forfeit and pay the sum of* 10*l. to be paid and applied as follows, that is to say, to be paid to the churchwardens and overseers of the poor of the parish of* ——, *wherein the said J. Y. was legally settled at the time the said C. D. did so remove,"* [or, *"did so abandon and leave the said J. Y.*] *as aforesaid, for the use of the poor of the said parish; and in case such penalty shall not be paid by the said C. D., or levied by distress upon his goods and chattels, within* —— *days from the date of this conviction, we adjudge that the said C. D. shall be imprisoned in* [*the house of correction for the said county*], *for the space of"* [not less than one, nor more than six] *"months." Given under our hands and seals, the day and year first above-mentioned.*

J. P.
L. M.

The following may be the form of the justices' order, supposing the master to give notice, and to attend with the apprentice before the justices; it may be indorsed upon the indenture.

Berkshire to wit: Whereas C. D. the master of the apprentice in the within indenture mentioned, is about to remove residence [*or establishment of business*] *out of the said county of Berks,* [*or more than* 40 *miles from the parish of* —— *wherein the same was when J. Y., the said apprentice, was so bound as within mentioned*], *and the said C. D. hath given due notice thereof to the churchwardens and overseers of the poor of the parish of* ——, *where the said J. Y. the said apprentice now resides; and whereas the said C. D. the said J. Y., and the overseers of the poor of the said parish now appear before us the said justices; and we the said justices, having made due enquiry whether it may be fit and proper that the said J. Y. should continue in the service of the said C. D. or be discharged therefrom or bound or assigned over to any other person, do find that it is fit and proper that the said J. Y. should* [&c.]; *and we do hereby order* [&c.]; and if the order be to discharge the apprentice, or assign or bind him to another master, the justices may add:" *And we do hereby order and require the said C. D. to pay to* —— *the sum of* ——, *being such part of the premium by him received with the said apprentice as to us seems meet and reasonable, for the purpose of binding or assigning him the said J. Y. to another master.*] *Given under our hands and seals, this* ——.

Master dying.] Formerly, on the death of the master, the contract for service on the part of the apprentice ceased, but the covenant of the master for maintenance continued, and bound his executors during the residue of the term. But by stat. 32 G. 3, c. 57, s. 1, where not more than 5*l.* has been given as premium with a parish apprentice, the covenant for maintenance shall not continue in force for more than three calendar months after the death of the master or mistress, during which time the apprentice shall serve the executors, &c. or such person as they may appoint. And by sect. 2, at any time within the three months, two justices of the county, city, town, riding, division, or place where the master died, upon application to them by the widow of such master, or husband of such mistress, or by any son, daughter, brother, sister, or executor, &c. of the deceased, who had lived with him, and been part of his family at the time of his death, by indorsement on the indenture, may order the apprentice to serve such person during the residue of the term; and such person shall declare his acceptance of such apprentice, by subscribing his name to such order, and he shall thereafter be deemed the master of the apprentice, and be bound by the covenants in the indenture, as if the apprentice had been originally bound to him, and he had executed the counterpart of the indenture. And the like, on the death of the second or a subsequent master. *Id. s.* 3. But if no such application be made, or the justices shall not think it fit that the apprentice should be continued, then the apprenticeship shall be determined, and the indenture and covenants be at an end. *Id. s.* 4. This act, however, extends only to such apprentices as shall live with and be part of the family, or be in the actual employment, of the original master, or such other master as may be appointed under this act, at the time of his death. *Id. s.* 5. *See R. v. Sheepsherd*, 15 *East*, 59.

The form of the order, continuing the apprentice, as given by the statute, is thus:—

County of } *Whereas F. M.* (the master) *within named, late* } *of the parish of —— in the said county, died on the —— day of —— being within three calendar months now last past: we, two of Her Majesty's justices of the peace for the county aforesaid, whose names are hereunto subscribed, on the application and at the request of A. M. widow* (or as the case may be) *of the said F. M. living with and being part of the family of the said F. M. at the time of his death, do hereby order and direct, that A. P. the apprentice within named, who was in the service and actual employment of the said F. M. at the time of his death, shall serve the said A. M. as such apprentice, for the residue of the term of such apprenticeship within mentioned, according to the provisions of an act passed in the thirty-*

second year of the reign of King George the Third, intituled, "An Act for the further regulation of parish apprentices." Witness our hands this —— day of ——.

I, the above-named A. M. do hereby declare, That the above order is made at my request, and that I do accept the said A. P. as my apprentice, according to the terms and covenants contained in the said indenture, and according to the provisions of the said act. Witness my hand, the day and year above-written.

Form of the like order, by a separate instrument.

County of } *Whereas it appears unto us, two of Her Majesty's justices of the peace for the said county, That A. P.* (the apprentice) *was bound an apprentice, by the churchwardens and overseers of the poor of the parish of —— to F. M.* (the master) *late of the said parish, and that the said F. M. died on —— day of ——, being within three calendar months now last past: Now we the said two justices, on the application and at the request, &c.* (then to the end, as before, mutatis mutandis.)

Covenant for maintenance, how enforced.] By stat. 32 G. 3, c. 57, s. 6, in case the original master of a parish apprentice [with whom not more than 5*l.* has been given as premium, s. 9] or any master appointed under this act (*see ante*, p. 106), shall during the term of the apprenticeship, or if his executors, &c. (having assets) shall during three months after his death, refuse or neglect to maintain and provide for any such apprentice, according to the terms of the covenant for that purpose in the indenture, any two justices of the peace of the county, city, town, riding, division, or place, in which the parish or place to which the apprentice may belong shall lie, on complaint of such apprentice, or of the churchwardens or overseers of such parish or place, may, by warrant under their hands and seals, levy, by distress and sale of the personal estate and effects or assets of such master, such sum as shall be necessary for the maintenance and clothing of such apprentice, and as shall also be necessary to reimburse to such churchwardens and overseers any sums that shall have been reasonably expended by them for that purpose.

And by stat. 7 & 8 Vict. c. 101, s. 12, every master of a parish apprentice, who shall wilfully refuse or neglect to perform any of the terms or conditions inserted in the indenture, shall be liable, upon conviction thereof before any two justices, to forfeit any sum not exceeding 20*l.* *See ante*, p. 93.

Assignment.] By stat. 32 G. 3, c. 57, s. 7, reciting that "it frequently happens that persons are compellable to take a greater number of parish apprentices than is convenient for them to maintain or employ in their own families, and they are therefore forced to place out or assign over such apprentices to other persons; and it is proper that such assignment should be legally made, under the inspection and control of the magistrates, as well for the benefit of the apprentice, as that the original master may be discharged from his covenants in respect of such apprentice; and it is fit that the person to whom such assignment shall be made, and also the apprentice, should be made subject to the ordinary jurisdiction of justices of the peace with respect to masters and parish apprentices;" it is therefore enacted, "that it shall and may be lawful for any master or mistress of any such parish apprentice as aforesaid, [with whom not more than 5*l.* shall have been given as premium, s. 9,] by indorsement on the indenture of apprenticeship, or by other instrument in writing, by and with the consent of two justices of the peace of the county, city, town, riding, division, or place where such master or mistress shall dwell, testified by such justices under their hands, to assign such apprentice to any person who is willing to take such apprentice for the residue of the term mentioned in such indenture of apprenticeship; provided always, that such person to whom such apprentice is intended to be assigned, shall at the same time by indorsement on the counterpart of such indenture, or by writing under his or her hand stating the said indenture of apprenticeship, and the indorsement and consent aforesaid, declare his or her acceptance of such apprentice, and acknowledge himself, herself, his or her executors and administrators, to be bound by the agreements and covenants mentioned in the said indenture, on the part of the master or mistress of such apprentice to be done and performed; which indorsement or instrument may be in the forms or to the effect mentioned in the schedule hereunto annexed; and in such case such apprentice shall be deemed and taken to be the apprentice of such subsequent master or mistress to whom such assignment shall be made, to all intents and purposes whatsoever; and so from time to time, as often as it shall be necessary or convenient for any such subsequent master or mistress to part with any such apprentice; and all justices of the peace shall have the like power and authority, in the several cases last mentioned, with respect as well to the subsequent master or mistress, masters or mistresses, as to the apprentice, as such justices shall then have by any law for the better regulation of parish apprentices." See also 56 G. 3, c. 139, ss. 9 & 10, *post*, pp. 110, 111.

The following is the form of the assignment, by indorsement on the indenture or counterpart, given by the statute:—

County of } *Be it remembered, that the within-named F. M.* (the master) *by and with the consent and approbation of I. P. and K. P. two of Her Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, doth hereby assign A. P. the apprentice within named, unto N. M.* (the new master) *to serve him during the residue of the term within mentioned; and that he the said N. M. doth hereby agree to accept and take the said A. P. as an apprentice for the residue of the said term, and doth hereby acknowledge himself, his executors, and administrators, to be bound by the agreements and covenants within mentioned, on the part of the said F. M. to be done and performed, according to the true intent and meaning thereof, and pursuant to the provisions of an Act passed in the thirty-second year of the reign of King George the Third, intituled, An Act for the further regulation of parish apprentices. In witness whereof we, the said F. M. and N. M. have hereunto set our hands, this —— day of ——.*

We, two of Her Majesty's justices of the peace above mentioned, do consent thereto. Witness our hands, this —— day of —— *I. P.*
K. P.

Form of the like assignment by a separate instrument.—(See *R.* v. *Exminster*, 6 *Ad.* & *El.* 598.)

County of } *Whereas it appears unto us I. P. and K. P. two of Her Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, that A. P. was bound an apprentice by the churchwardens and overseers of the poor of the parish of —— to F. M. of the same parish —— by indenture bearing date on or about the —— day of —— until the said A. P. should attain his age of twenty-one years. Now be it remembered, that the said F. M. by and with the consent, &c.* (and so, to the end, as before, mutatis mutandis).

This assignment must be executed by the master, or by some person legally authorized by him. Where the master was abroad, and the assignment was executed by his steward without any other authority than what might be implied from his often having done so before, and the expenses being allowed by the master in his accounts, the court held the assignment to be bad, and that the apprentice gained no settlement under it; the master should exercise his discretion in making it, and it should therefore be executed either by himself, or by express authority from him. *R.* v. *Spreyton*, 3 *B.* & *Ad.* 818.

If a premium be paid from one master to the other, the assignment must be stamped accordingly. But if it be paid by

the parish, in that case no stamp is required; 55 G. 3, c. 184, *sch.* *See* 32 G. 3, c. 57, s. 10; and where it was actually paid out of the parish funds, but was stated by mistake in the assignment to have been paid by the first master, the court held that evidence was admissible to show whose money it was. *R.* v. *Llangunnor*, 2 *B.* & *Ad.* 616. The assignment, however, is not within stat. 8 Ann, c. 9, ss. 35—39, (*See ante*, p. 85), which requires the premium to be mentioned in the instrument. *R.* v. *Ide*, 2 *B.* & *Ad.* 866.

Upon any assignment of a parish apprentice, the overseer shall enter in his book (*See ante*, p. 103) the house and residence of the master or mistress to whom the witness shall be assigned or bound over, together with the other particulars, under the same penalties as upon the original binding. 42 G. 3, c. 46, s. 5.

Discharge of apprentice.] By stat. 32 G. 3, c. 57, s. 8, reciting that no express provision had been made for the discharging of any parish apprentice from a master who had become insolvent, or who was so far reduced in his circumstances as to be unable to employ or maintain such apprentice, it was enacted, "that it shall and may be lawful for two justices of the peace of the county, city, town, riding, division, or place where any such master shall live, on the application of such master, requesting that any such apprentice may be discharged, for the reason aforesaid, to inquire into the matter of such allegations, and to discharge any such apprentice from his apprenticeship, in case the said two justices shall find such allegations to be true."

And by stat. 56 G. 3, c. 139, s. 9, after reciting that it may be expedient that those to whom parish apprentices are bound or assigned, should be empowered to place out or assign over such apprentice to others, and it is proper that such placing out or assignment should in all instances be under the inspection and control of the magistrates; and it is fit that the person, to whom such putting out or assignment should be made, and also the apprentice, shall be made subject to the ordinary jurisdiction of justices of the peace, with respect to masters and parish apprentices; and that it is expedient that any master or mistress should in any way discharge or dismiss from his or her service, any parish apprentice without the consent of such justices: it was thereby enacted, that it shall not be lawful for any master or mistress to put away or transfer any parish apprentice to any other, or in any way to discharge or dismiss from his or her service any parish apprentice, without such consent of justices as is directed in stat. 32 G. 3, c. 57; (*See s.* 8, *supra, and sect.* 7, *ante*, p. 103;) and that no settlement shall be gained by any service of such apprentice, after such putting away or transfer, unless such service shall

have been performed under the sanction of such consent as aforesaid. *See R.* v. *Gwinear*, 1 *Ad.* & *El.* 152.

Also, by sect. 10, any person who "shall put away or transfer any parish apprentice to another, or who shall in any way discharge or dismiss from his or her service any parish apprentice, without such consent as aforesaid, shall forfeit a sum not exceeding 10*l.* for every apprentice so transferred."

Where a tailor, to whom a parish apprentice was bound, not having work for him, agreed with a draper that he should work for him at the business of a tailor, in consideration of 5*s.* a week being paid to him (the first master) out of the boy's earnings: the court held this to be a putting away of the apprentice, within the meaning of these sections. *R.* v. *Wainfleet, All Saints*, 9 *Law J.* 31, *m.*

3. *Parish Apprentices in Unions, or in Parishes under Guardians.*

By stat 7 & 8 Vict. c. 101, s. 12, after the 1st October, 1844, no poor child shall be bound apprentice by the overseers of any parish included in any union, or subject to a board of guardians under the provisions of stat. 4 & 5 W. 4, c. 76, but it shall be lawful for the guardians of such union or parish respectively to bind any such poor child to be an apprentice, and in such case the indentures of apprenticeship shall be executed by the said guardians, and shall not need to be allowed, assented to or executed by any justice or justices of the peace; and the guardians shall have all the powers for binding or assigning any such apprentice which are now possessed by overseers, and shall cause all apprentices so bound or assigned by them to be registered by their clerk according to the form prescribed by stat. 42 G. 3, c. 46, (*see ante*, p. 103,) relating to the registration of parish apprentices, so far as the same may be applicable to such binding or assignment: Provided always, that nothing herein contained shall directly or indirectly interfere with the provisions of any Act of Parliament relating to apprentices to be bound to the sea service.

By the same section, the Poor Law Commissioners, may, by order under their hands and seal, prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions to be inserted in the indentures by which such children may be so bound as such apprentices; and every master of such apprentice, who wilfully refuses or neglects to perform any such terms or conditions so inserted in any such indenture, shall be liable, upon conviction thereof before any two justices, to forfeit any sum not exceeding twenty pounds. *Id. s.* 12. The rules laid down by the Poor Law Commissioners, in pursuance of the above section, have been fully noticed, *ante*, p. 89.

In this case the guardians and the master will be the parties to the indenture; but the child need not be a party to it, although he must sign it.

4. *Apprentices to the Sea Service.*

Who may be bound and by whom.] "It shall be lawful for the overseers of the poor of any parish or township to bind by indenture any boy, having attained the age of thirteen years, and of sufficient health and strength, who or whose parent is chargeable to or maintained by any such parish or township, or who shall beg for alms therein, with his consent but not otherwise, an apprentice in the sea service, until he shall attain the age of twenty-one years." 5 & 6 W. 4, c. 19, s. 26.

To whom.] They may be bound to any of her Majesty's subjects, being a master or owner of any ship registered in any port of the United Kingdom. 5 & 6 W. 4, c. 19, s. 26. And the master of every ship belonging to any subject of the United Kingdom, of the burthen of 80 tons, or upwards, shall have on board, at the time of clearing out from any port of the United Kingdom, if under 200 tons, one apprentice; of 200 tons and under 400, two; of 400 tons and under 500, three; of 500 tons and under 700, four; of 700 and upwards, five at the least; all of them when bound being under seventeen years of age, and bound for four years at the least;" and if any such master shall neglect to have on board his ship the number of apprentices as hereby required, he shall for every such offence forfeit and pay the sum of 10*l.* in respect of each apprentice so deficient." *Id. s.* 31.

How bound.] The binding shall be "in the presence of two justices of the peace acting for the county, riding, division, city, borough, or place within which such parish or township shall be situate, which justices shall execute the indenture, in testimony of their having been satisfied that such boy hath attained the age, and is of sufficient health and strength, as required by this act." 5 & 6 W. 4, c. 19, s. 26. The overseers shall cause the indenture to be prepared; *Id. s.* 29; and "to the end that the period when the service under such indenture shall expire may the more certainly appear, the age of every such boy shall be inserted in his indenture, the same being truly taken from a copy of the entry of his baptism, in the register book of the parish in which he was born, (where the same can be obtained,) which copy shall be given and attested by the officiating minister of such parish without fee or reward; and in cases where no such entry of baptism can be found, the justices aforesaid shall inform themselves as fully

as they can of such boy's age, and from such information shall insert the same in his said indenture; and the age of every such boy, so inserted therein, shall (in relation to the continuance of his service) be taken to be his true age, without any further proof thereof." *Id. s.* 26. No stamp is necessary in the case either of parish or voluntary apprentices to the sea service, upon the indenture or any assignment of it. *Id. s.* 35. The indentures, when prepared and executed, shall be transmitted in duplicate (if the master or owner of the ship to whom the boy is bound, be or reside within the limits of the port of London) to the registrar, or (if at any other port) to the collector or comptroller of the customs at such port. *Id. s.* 29.

The overseers shall cause the boy to be conveyed to such port by the constables, at the expense of the parish or township, and shall also, upon the execution by the master of the counterpart of the indentures, cause to be paid down to the master the sum of 5*l.*, to be expended in providing the boy with necessary sea clothing and bedding. *Id. s.* 29. If the master be or reside within the limits of the port of London, the counterpart of the indenture shall be executed in the presence of and attested by the registrar or his clerk; if at any other port, by the collector or comptroller of the customs there, and in both cases by the constable who shall convey the boy there; and the constable on his return shall deliver such counterpart to the overseers, to be by them registered and preserved. *Id. s.* 30.

Assignment.] The master of any parish apprentice, or if dead, his executors or administrators, or if no executors, &c. his widow, may, "with the concurrence of two or more justices of the peace, residing in or near to the place where such poor boy shall have been bound apprentice, assign such apprentice (with his consent, but not otherwise) to any master or owner of a ship not having her complement of apprentices, to be by him employed in the sea service during the residue of the term; 5 & 6 W. 4, c. 19, s. 27.

So, where the master of an apprentice to the sea service dies, his widow or executor or administrator may assign the apprentice to the master or owner of a ship not having her complement of apprentices. *Id. s.* 28. All which assignments, if made within the limits of the port of London, shall be attested by the registrar or his clerk, or if made at any other port, by the collector or comptroller of the customs there. *Id.*

To be registered.] The registrar in London, and the collectors and comptrollers of the customs at the other ports, shall register all such indentures and assignments in a book to be kept for the purpose, and shall indorse thereon a memorandum

thereof; and such collector and comptroller shall every quarter transmit a list of the indentures and assignments registered by him, to the said registrar. *Id. s.* 33.

Voluntary apprentices to the sea service.] The indentures of such apprentices, or any assignments thereof, shall be free from stamp duty. 5 & 6 W. 4, c. 19, s. 35. They shall be registered, as above mentioned; *Id. s.* 34; and the apprentice may, during the term, be employed in any ship, of which his master may be master or owner. *Id.* And his master, or in case of his death, his executor or administrator, with the consent of the apprentice, if he be seventeen years of age, or if under that age, with the consent of his parent or guardian, may assign him to the master or owner of any registered ship. *Id.*

Neglect, &c. of master.] "If any master, to whom any apprentice mentioned in this act shall be bound or assigned, shall neglect to cause the indenture or the assignment thereof (as the case may be) to be registered, as required by this act; or shall, after the ship shall have cleared outwards on the voyage upon which such ship may be bound, suffer his apprentice to quit his service, (not entering into that of his Majesty,) except in case of death, desertion, sickness, or other unavoidable cause, to be certified in the log-book of the ship: every such master shall, for every such offence, forfeit and pay the sum of 10*l.* 5 & 6 W. 4, c. 19, s. 36. The conviction is in the common form.

5. *Complaints by Masters of their Apprentices.*

As to apprentices generally, under 5 *El. c.* 4.] If any apprentice do not his duty to his master, then the said master being aggrieved, and having cause to complain, shall repair unto one justice of the peace within the said county, or to the mayor or other head officer of the said city, town corporate, market town, or other place where the said master dwelleth, who shall by his wisdom and discretion take such order and direction between the said master and his apprentice, as the equity of the cause shall require. 5 El. c. 4, s. 35. But "if for want of good conformity in the said master" the justice or mayor cannot compound and agree the matter between him and the apprentice, he may take bond from the master to appear at the next sessions; and upon his appearance, and hearing the matter before the justices, or the mayor, &c. there, the said justices or any four of them, (one being of the *quorum*,) or the mayor or head officer with three of his brethren, if they think it meet to discharge such apprentice from his apprenticeship, may, by writing under their hands

and seals, pronounce and declare that they have discharged the said apprentice from his apprenticeship; and the cause thereof; which writing being enrolled, shall be a sufficient discharge of the apprentice; (*see R.* v. *Hales Owen*, 1 *Str.* 99;) and if the default shall be found in the apprentice, then the said justices or mayor, &c. "shall cause due correction and punishment to be ministered unto him, as by their wisdom and discretion shall be thought meet." *Id.*

This statute extends to all kinds of apprentices, *R.* v. *Collinborn*, 2 *Ld. Raym.* 1410, and to every kind of bad and disorderly behaviour on the part of the apprentice; *Semb. see Hawkesworth* v. *Hillary*, 1 *Saund.* 314; and for misbehaviour of the apprentice, the justices may at their discretion punish him, or discharge him, *per Cur. Id.*, or perhaps both. Where the boy proved to be an idiot, also, it was holden to be a good ground for discharging him; *Anon.* 1 *Bott*, 669; but it is no ground that the apprentice is afflicted with a disease, although supposed to be incurable. *R.* v. *Hales Owen*, 1 *Str.* 99.

The sessions have an original jurisdiction in this case, *R.* v. *Johnson*, 1 *Salk.* 68. *R.* v. *Gill*, 1 *Str.* 143. *R.* v. *Davie*, 2 *Str.* 704. *Arglis* v. *Heasman*, *Ca. Temp. Hardw.* 101, notwithstanding the statute would seem to imply that the application should be made to a single justice or mayor, &c. in the first instance. And they may adjudicate upon the matter, although the master do not appear. *Ditton's Case*, 2 *Salk.* 490. But the application to the sessions, in the first instance, is very rarely had recourse to in practice, because the master, in most cases, can have as satisfactory, and a much readier remedy, before two justices out of sessions, as we shall see presently; and an application to a single justice or mayor out of sessions, under this statute of Elizabeth, is seldom resorted to, on account of the very imperfect power given to him, he having little more authority than merely to arbitrate between the parties.

The like under stat. 20 *G.* 2, *c.* 19, *&c.*] Two or more justices [or one justice, 4 G. 4, c. 29, s. 1,] upon application or complaint upon oath by any master or mistress [or by his or her steward, manager, or agent, 4 G. 4, c. 34, s. 1,] against any apprentice put out by the parish, or any other apprentice upon whose binding out no larger sum than [25*l.* 4 G. 4, c. 29, s. 1] was paid, touching or concerning any misdemeanor, miscarriage, or ill behaviour in such his or her service, may hear, examine, and determine the same, and punish the offender by commitment to the house of correction, there to remain and be corrected and held to hard labour for a reasonable time, not exceeding [three, 4 G. 4, c. 34, s. 1] calendar months, or otherwise, by discharging such apprentice by warrant or certificate under their hands and seals. 20 G. 2, c. 19, s. 4. It is

not necessary in this case that the master, &c. should make oath; it is sufficient if he make the complaint, and support it by the oath of another person, for he himself may know nothing of the matter. *Finley* v. *Jowle*, 12 *East*, 248.

The commitment, after the usual direction to the constable and keeper of the house of correction, may be thus: *Whereas complaint hath been made to us, two of Her Majesty's justices of the peace, in and for* ——, *by A. B., of* ——, *carpenter* [*manager or agent for one C. D., of* ——, *builder,*] *on the oath of* ——, *that E. F., an apprentice to the said* ——, *and upon whose binding out no larger sum than* 25*l. of lawful British money, to wit, the sum of* £—— *only, was paid, did on* ——, *at* ——, [here describe the "misdemeanor, miscarriage, or ill behaviour."] *And the said parties having appeared before us on* ——, *at* ——, *we, the said justices, having heard and examined the matter of the said complaint, and what each of the said parties had to say in that behalf, and it manifestly appearing to us that the said E. F. is guilty of the premises so charged against him as aforesaid,* do adjudge him the said E. F. to be imprisoned in the house of correction at* ——, *there to be kept to hard labour for the space of* ——: *we do therefore command you the said constable to take and convey the said E. F. to the said house of correction, and to deliver him to the said keeper thereof, together with this our warrant; and we do hereby command you, the said keeper of the said house of correction, to receive the said E. F. into the said house of correction, and there to keep him to hard labour for the space of* —— *from the date hereof. Given under our hands and seals, at* ——, *the* —— *day of* ——, &c.

If the justices discharge the apprentice, the warrant or certificate of discharge may be the same as the above form to the asterisk,* and then thus: "*do order and adjudge that the said E. F. be forthwith discharged from his apprenticeship to the said A. B., and from the indentures in that behalf between them, and we the said justices do by this our warrant, discharge him the said E. F. accordingly, and do hereby certify the same, in pursuance of the statute in such case made and provided. Given under our hands and seals at* ——, *the* —— *day of* ——," &c.

Either party thinking himself aggrieved by such determination, order, or warrant, may appeal to the next general quarter sessions, and the sessions may, at their discretion, award costs not exceeding 40*s*. 20 G. 2, c. 19, s. 5. Proceedings are not to be removed by certiorari, &c. *Id. s.* 6.

The above act does not extend to the stannaries in the counties of Devon and Cornwall. *Id. s.* 7.

In ordinary cases under the above statute, the justices can

only punish or discharge the apprentice; they cannot do both. But by stat 32 G. 3, c. 57, s. 13, "where any parish apprentice shall be discharged by two justices, under and by virtue of the said last mentioned act, from his or her apprenticeship, on account of any misdemeanor, miscarriage, or ill behaviour on the part of such apprentice, it shall be lawful for such two justices, if they think proper, by warrant under their hands and seals, to punish such offender by commitment to the house of correction, there to remain and be corrected, and kept to hard labour for a reasonable time, not exceeding three calendar months." By sect. 14, an appeal is given to the next general quarter sessions, which may award "reasonable costs and expenses" to either party.

Apprentices absconding.] By stat. 6 G. 3, c. 25, s. 1, "if any apprentice, [with whom his master shall not have received the sum of 10*l.* *sect.* 2,] shall absent himself from his master's service before the term of his apprenticeship shall be expired, every such apprentice shall, at any time or times thereafter [within seven years after the term for which he contracted to serve, *sect.* 3,] whenever he shall be found, be compelled to serve his said master for so long a time as he shall have absented himself from such service, unless he shall make satisfaction to his master for the loss he shall have sustained by his absence from his service, and so from time to time, as often as such apprentice shall, without leave of his master, absent himself from his service before the term of his contract shall be fulfilled; and in case any such apprentice shall refuse to serve, as hereby required, or to make such satisfaction to his master, such master may complain, upon oath, to any justice of the peace of the county or place where he shall reside, which oath such justice is hereby empowered to administer, and to issue a warrant under his hand and seal for apprehending any such apprentice; and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice; and in case such apprentice shall not give security to make such satisfaction according to such determination, it shall and may be lawful for such justice to commit every such apprentice to the house of correction, for any time not exceeding three months."

The adjudication or determination of the justice, as to the amount of satisfaction to be made to the master, may be thus:

Berkshire to wit: Whereas complaint hath been made to me, one of Her Majesty's justices of the peace in and for ——, by A. B., of ——, carpenter, on oath, that E. F., an apprentice of the said A. B., and with whom he the said A. B. did not receive the sum of 10*l.*, *did on ——, and before the term of his apprentice-*

ship was expired, at ——, *absent himself from the service of the said A. B. his said master, without the leave of him the said master, and that he hath since, to wit, on* ——, *at* ——, *refused to serve the said A. B. his said master, and hath then and there refused to make satisfaction to the said A. B. his said master, for the loss he hath sustained by the said absence of him the said E. F. from the service of the said A. B. his said master as aforesaid: and as well the said E. F. as the said A. B. now appearing before me, I, the said justice, having heard the said complaint, and having heard what the said E. F. hath alleged in answer to the same, and it manifestly appearing to me that the said E. F. is guilty of the premises so charged against him as aforesaid, and that the said A. B. hath sustained a loss to the amount of* —— *by the said absence of the said E. F. from his service, do hereby adjudge that he the said E. F. do pay unto the said A. B., his master as aforesaid, the sum of* ——, *as satisfaction for the loss so by the said A. B. sustained as aforesaid, by reason of the said absence of the said E. F. from the service of the said A. B. as aforesaid. Given under my hand and seal, at* ——, *the* —— *day*, &c.

The warrant of commitment (after the usual direction to the constable and keeper of the house of correction,) may be thus: *Whereas heretofore on* ——, *upon complaint made to me*, [&c. reciting the above adjudication in the past tense, to the end] *from the service of the said A. B. as aforesaid; and whereas the said sum of* —— *hath not, nor hath any part thereof, been paid by the said E. F. to the said A. B.; and whereas the said E. F. hath not given security to make such satisfaction, according to the said adjudication and determination of me the said justice as aforesaid, although the same hath been required and demanded of him, but hath neglected and refused so to do: I do therefore command you the said constable to take and convey the said E. F. to the said house of correction, and to deliver him to the said keeper thereof, together with this my warrant; and I do hereby command you, the said keeper of the said house of correction, to receive the said E. F. into the said house of correction, and there to keep him to hard labour for the space of* —— *from the date hereof. Given under my hand and seal, at* ——, *the* —— *day*, &c.

The statute gives an appeal to the next general quarter sessions; but not against the order of commitment. 6 G. 3, c. 25, s. 5, *and see R.* v. *JJ. of Staffordshire*, 12 *East*, 572. It may be necessary to add, that this statute does not extend to the stannaries of the counties of Devon or Cornwall, nor is it to affect the jurisdiction of the chamberlain, &c. of London, as to apprentices. *Id. s.* 6. It is deemed also to be cumulative, and not a repeal of stat. 20 G. 2, c. 19. *Gray* v. *Cookson et al.*, 16 *East*, 13.

Also, as to the apprentices mentioned in stat. 20 G. 2, c. 19, 4 G. 4, c. 29, and 6 G. 3, c. 25, already noticed (*ante*, pp. 115, 117,) if such apprentice shall have absconded, it shall be lawful for any justice of the peace of the county or place where such apprentice shall be found, or shall have been employed, and on complaint thereof made on oath by the master, or by his steward, manager, or agent, to issue his warrant for apprehending every such apprentice; "and further to hear and determine the same complaint, and to punish the offender by abating the whole or any part of his or her wages, or otherwise by commitment to the house of correction, there to remain and be held to hard labour for a reasonable time, not exceeding three months." 4 G. 4, c. 34, s. 1. The forms on this statute may readily be framed from those on the preceding statute.

Apprentices to the sea service.] Any two or more justices of the peace, residing at or near to any port at which any ship, registered in any port in the United Kingdom, having on board any sea apprentice, shall arrive, shall have full power and authority to inquire into and examine, hear and determine all complaints of misbehaviour on the part of any such apprentice, and to make such orders therein as they are empowered by law to do in other cases between masters and apprentices. 5 & 6 W. 4, c. 19, s. 37.

6. *Complaints by Apprentices of their Masters.*

Apprentices generally, under stat. 5 El. c. 4.] If any master shall "misuse, or evil intreat his apprentice, or the said apprentice shall have any just cause to complain," then the said apprentice, being aggrieved and having cause to complain, shall repair unto one justice of the peace within the said county, or to the mayor or other head officer of the city, town corporate, market town or other place where the said master dwelleth, who shall by his wisdom and discretion take such order and direction between the said master and his apprentice, as the equity of the cause shall require. 5. El. c. 4, s. 35. The statute then enacts, that if, "for want of good conformity in the said master," the justice shall not be able to settle the matter between them, he may refer it to the justices at sessions, who, if they think fit, may discharge the apprentice,—as already mentioned, *ante*, p. 114. The statute, as we have seen, (*ante*, p. 115,) extends to all kinds of apprentices; *R.* v. *Collinbourn*, 2 *Ld. Raym.* 1410; and extends to cases where the master neglects to instruct the apprentice in his trade, *R.* v. *Amies*, 1 *Bott*, 682, as well as to cases of ill usage or ill treat-

ment. But for the reasons mentioned, *ante*, p. 115, a proceeding under this statute is seldom resorted to in practice.

The like, under stat. 20 *G.* 2, *c.* 19.] Any two or more justices, upon complaint or application by any apprentice put out by the parish, or any other apprentice upon whose binding out no larger sum than [25*l.*, 4 *G.* 4, *c.* 29, *s.* 1,] was paid, "touching or concerning any misusage, refusal of necessary provision, cruelty or other ill treatment of or toward such apprentice, by his or her master or mistress, may summon such master or mistress to appear before such justices at a reasonable time to be named in such summons; and such justices shall and may examine into the matter of such complaint; and upon proof thereof made upon oath to their satisfaction, (whether the master or mistress be present or not, if service of the summons be also upon oath proved,) the said justices may discharge such apprentice by warrant or certificate under their hands and seals, for which warrant or certificate no fees shall be paid." 20 *G.* 2, *c.* 19, *s.* 3.

Besides which, by stat. 32 G. 2, c. 57, s. 11, in the case of parish apprentices, such two justices may order such master or mistress "to deliver up to such apprentice his or her clothes and wearing apparel; and also to pay to such churchwardens or overseers of the poor of the parish or place to which such apprentice shall belong, some or one of them, a sum not exceeding 10*l.*, to be applied by them, some or one of them, under the order of such justices, for the again placing and binding out such apprentice so discharged as aforesaid, or otherwise, for his or her benefit, as to such justices shall seem meet; and also to pay a sum not exceeding 5*l.*, in case such master or mistress shall refuse to deliver up such clothes and wearing apparel: and in case such master or mistress shall refuse to pay the sum so ordered by the said justices to be paid as aforesaid, or either of them, or any part thereof, it shall and may be lawful for such two justices, by warrant under their hands and seals, to levy the same by distress and sale of the goods and chattels of such master or mistress, together with the reasonable expenses of such distress; and also that it shall and may be lawful for such two justices, if they shall so think fit, to compel such churchwardens and overseers of the poor, some or one of them, to enter into a recognizance for the effectual prosecution by indictment of such master or mistress for such ill-treatment of any such apprentice so discharged as aforesaid, and also to order that the costs and expenses of such prosecution shall be paid and discharged, or reimbursed to such person or persons entering into such recognizance as aforesaid, one moiety thereof out of the poor-rates of the parish or place to which such apprentice shall belong, and the other moiety thereof out of the common stock of the county in

which such parish or place shall lie; and in case the churchwardens and overseers of the poor of such parish or place for the time being shall refuse to pay such their moiety as aforesaid, it shall and may be lawful for such two justices, by warrant under their hands and seals, to levy the same by distress and sale of the goods and chattels of such churchwardens and overseers of the poor, any or either of them, together with the reasonable expenses of such distress."

The following may be the form of the order:—

Berkshire to wit: Whereas complaint hath been made to us, two of Her Majesty's justices of the peace in and for ——, *by E. F. an apprentice* [*put out by the parish of A.*] *to C. D., of* ——, *carpenter, for that he the said C. D., on* ——, *at* ——, [here describe the ill treatment, &c. complained of]. *And the said C. D. having on* ——, *at* ——, *appeared before us in obedience to a summons in that behalf served upon him,* [or *and the said C. D. not having appeared before us in obedience to a summons in that behalf proved on oath to have been served upon him*], *we the said justices have examined into the matter of the said complaint; and it manifestly appearing to us that the said C. D. is guilty of the premises so charged against him as aforesaid, we do order and adjudge that the said E. F. be forthwith discharged from his apprenticeship to the said C. D., and from the indentures in that behalf between them, and we the said justices do by this our warrant discharge him the said E. F. accordingly, and do hereby certify the same, in pursuance of the statute in such case made and provided.* [And if the apprentice be a parish apprentice, the order may, under stat. 32 G. 3, c. 57, s. 11, above mentioned, proceed thus:—*And we the said justices do further order and adjudge that the said C. D. shall on* —— *deliver up to the said E. F. all his clothes and wearing apparel now in the possession and under the control of the said C. D., or in case the said C. D. shall refuse to deliver up the same, then that the said C. D. shall pay unto the said E. F. the sum of* ——; *and we the said justices do further order and adjudge that the said C. D. shall forthwith pay unto the churchwardens and overseers of the poor of the parish of A. aforesaid* (*to which parish the said E. F. doth belong*), *or to some or one of them, the sum of* ——, *to be by them, or some or one of them, applied for the again placing and binding out the said E. F. or otherwise, as by an order in that behalf, to be hereafter made, they shall be ordered and directed, in pursuance of the statute in such case made and provided.*] *Given under our hands and seals, at* ——, *the* —— *day of*, &c.

If any person think himself aggrieved by such order, he may appeal to the next general quarter sessions. 20 G. 2, c. 19, s. 5. 32 G. 3, c. 57, ss. 12, 14. The order or proceed-

ings however shall not be removed by certiorari. 20 G. 2, c. 19, s. 6.

The stat. 20 G. 2, c. 19, does not extend to the stannaries in the counties of Devon and Cornwall. *Id.* s. 7.

The like under stat. 33 *G.* 3, *c.* 55.] As many cases, however, might occur, in which it would not be necessary, or indeed beneficial for the apprentice, that he should be discharged from his indentures for the ill treatment complained of, and yet it might be necessary to punish the master, to deter him from a repetition of it, it was enacted by stat. 33 G. 3, c. 55, s. 1, that it shall be lawful for any two or more justices of the peace, assembled at any special or petty sessions, upon complaint made on oath by or on behalf of any apprentice to any trade or business whatsoever, (whether bound apprentice by any parish or township or otherwise, provided that not more than the sum of [25*l.* 4 *G.* 4, *c.* 29, s. 1] be paid upon the binding of such apprentice,) against his or her master or mistress, of any ill-usage of such apprentice (such master or mistress having been duly summoned to appear and answer such charge or complaint), to impose upon conviction any reasonable fine or fines, not exceeding the sum of 40*s.*, as a punishment for such ill-usage.

The penalty may be levied by distress; or for want of distress the master may be committed to the house of correction for a time not exceeding ten days. 33 G. 3, c. 55, s. 1. The penalty, when recovered, to be applied either to the relief of the parish, &c. where the master resides, or to or for the use and benefit of the apprentice, as a compensation for the injury sustained by him. *Id.* The master may appeal to the next general quarter sessions, giving ten days' notice. *Id.*

Conviction may be in the ordinary form, describing the offence thus: *That C. D. of* ——, *carpenter, on* ——, *at* ——, [here describe the ill usage complained of]; *he the said E. F. being then and there an apprentice of the said C. D. in his trade and business of a carpenter as aforesaid,* [*and bound as such apprentice to the said C. D. by the parish of A.*] *and not more than the sum of* 25*l. having been paid upon the said binding of the said E. F. as aforesaid; against the form of the statute in such case made and provided. Whereupon,* &c.

Apprentice to the sea service.] Any two or more justices of the peace, residing at or near to any port, at which any ship, registered in any port in the United Kingdom, having on board any sea apprentice, shall arrive, shall have full power and authority to inquire into and examine, hear and determine all claims of apprentices upon their masters under their indentures, and all complaints of hard or ill-usage exercised by their re-

spective masters towards any such their apprentices, and to make such orders therein as they are empowered by law to do, in other cases between masters and apprentices. 5 & 6 W. 4, c. 19, s. 37.

Premium when ordered to be returned.] Besides discharging the apprentice by the justices at sessions, under the statute 5 El. c. 4, it was holden at one time that the justices might also order a portion of the premium to be returned, although there was no express provision in the act to that effect. *R.* v. *Johnson*, 1 *Salk.* 68. But that case has since been overruled, and it has been holden that justices have no such power under that statute. *East* v. *Pill*, 4 *Mee.* & *W.* 665, 8 *Law J.* 133, *m.*

But in any case where two justices of the peace shall order an apprentice to be discharged under stat. 20 G. 2, c. 19, or 33 G. 3, c. 55, or 4 G. 4, c. 29, they may "take into consideration the circumstances under which such apprentice or apprentices shall be so discharged, and make an order upon the master or mistress of such apprentice or apprentices to refund all or any part of the premium or premiums which may have been or shall be paid upon the binding or placing out of such apprentice or apprentices, as such justices in their discretion shall see fit; and in case any sum or sums of money which shall be so ordered to be refunded by such master or mistress, shall be neglected to be paid to the person or persons directed in any such order to receive the same, it shall and may be lawful for such two or more justices, in petty sessions, by warrant under their hands and seals, to levy the same upon the goods and chattels of such master or mistress, with the costs and charges of levying such distress, rendering the overplus of the sale of such goods and chattels, upon demand, to such master or mistress; and in case there shall not be sufficient goods and chattels whereon to levy the same, then it shall and may be lawful for such justices to commit such offender or offenders to the house of correction, for any time not exceeding two months, unless the sum or sums ordered to be refunded, with all costs, shall be sooner paid or satisfied." 4 G. 4, c. 29, s. 2.

This may easily be made a part of the original order for the discharge of the apprentice. *See ante*, pp. 120, 121.

Recovery of wages.] All complaints, differences and disputes, which shall arise between masters or mistresses, and such their apprentices, as are within stat. 20 G. 2, c. 19, or 6 G. 3, c. 25, or 4 G. 4, c. 29, (*see ante*, 2, pp. 120, 121), "concerning any wages which may be due to such apprentices, may be heard and determined by one or more justice or justices of the peace of the county or place where such apprentice or ap-

prentices shall be employed; which said justice or justices is and are empowered to examine on oath any such master or mistress, apprentice or apprentices, or any witness or witnesses, touching any such complaint, difference or dispute, and to summon such master or mistress to appear before him or them at a reasonable time to be named in such summons, and to make such order for payment of so much wages to such apprentice or apprentices, as according to the terms of the indentures shall appear to such justice or justices under all the circumstances of the case to be justly due, provided that the sum in question does not exceed 10*l.*—the amount of such wages to be paid within such period as the said justice or justices shall think proper, and shall order the same to be paid: and in case of refusal or non-payment thereof, such justice and justices shall and may issue forth his and their warrant to levy the same by distress and sale of the goods and chattels of such master or mistress, rendering the overplus to the owners, after payment of the charges of such distress and sale." 4 G. 4, c. 34, s. 2.

Or if the master reside at a considerable distance from the parish or place where his business is carried on, or is absent either beyond seas or at a considerable distance, any justice of the county where the apprentice is employed, may summon the agent or foreman to whom the master intrusts his business before him, and hear and determine the complaint, and order the agent, &c. to pay the apprentice the wages due to him not exceeding 10*l.*; and in case of refusal or non-payment, the same may be levied by distress upon the goods of the master. *Id. s.* 4. *See post, title "Manufactures."*

The following may be the form of the order:—

Berkshire, to wit: Whereas complaint hath been made to me, one of Her Majesty's justices of the peace in and for ——, *by E. F. an apprentice to one C. D. of* ——, *builder, and now employed by him at* —— *in the said county, for that he the said E. F. was duly bound apprentice to the said C. D. on* ——, *and that by the indenture of apprenticeship between them the said E. F. was entitled to be paid wages at the rate of* —— *per week for every week during the last* [*three months*]; *and that* —— *of the wages aforesaid is now due and owing from the said C. D. to the said E. F. And the said C. D.* [or, *And A. B. the foreman of the said C. D. and to whom the said C. D. intrusts his said business of builder, he the said C. D. residing at a considerable distance from* ——, *where the said E. F. is now employed as aforesaid*] *being duly summoned to appear before me in this behalf,* [*but not*] *having appeared before me in obedience to such summons, I the said justice have examined into the matter of the said complaint; and it manifestly appearing to me that the said C. D. is justly indebted unto the*

said E. F. his apprentice as aforesaid in the sum of —— for wages, according to the terms of the said indenture, I do hereby adjudge the said sum of —— to be justly due from the said C. D. to the said E. F., and I do order the said [A. B. as foreman of the said] C. D. to pay unto the said E. F. the said sum of —— on or before —— next. Given under my hand, at ——, the —— day, &c.

APPROVER.

By the ancient law of this country, if a man, indicted for treason or felony, confessed the indictment, the court might admit him to become an approver against all other persons who were jointly concerned with him in the commission of the offence; in which case he lodged his appeal against his companions with the coroner, and if he succeeded in convicting them he was usually pardoned: but if he failed in his appeal, judgment was immediately given against him upon the indictment. *See* 2 *Hawk. c.* 24.

From this has originated the modern practice of admitting accomplices to give evidence against their fellows, particularly in cases of felony. This is done, either by the justice of peace before whom the offenders are brought, or by application to the court before whom they are to be tried. This should be done with great caution, and not without being fully apprized of the part the approver has taken in the offence, and being satisfied that his companions cannot be convicted without his testimony. Where this is not the case, it is better for the examining justices, if there be any evidence sufficient to warrant a commitment without the evidence of the accomplice, to commit the accomplice as well as the others, and leave it to the judge at the assizes, or the chairman at the quarter sessions, to exercise his discretion in ordering the accomplice to be taken as a witness before the grand jury or not, if an application for that purpose be made by the counsel for the prosecution.

If, however, the justice, under the circumstances of the case, think it right to receive the evidence of the accomplice, he should not make any promise to him of pardon or impunity, either as to the offence in question, or any other of which the accomplice may be guilty; if the latter act fairly, make a full and unequivocal confession of his and his companions' guilt, and give his evidence before the grand jury, and afterwards upon the trial, in a fair ingenuous manner, he will have an equitable claim to a pardon, or to a commutation of punishment, for that offence, *R.* v. *Rudd, Cowp.* 331, but not with respect to other offences committed, either by himself alone or in company with other companions. *R.* v. *Duce,* 1 *Phil. Ev.* 37. *R.* v. *Lee, Id. R.* v. *West, Id.*

As to the evidence of an accomplice, and the necessity of confirming it by other testimony, *see post, tit.* "*Evidence.*"

ARMS, TRAINING TO THE USE OF.

By stat. 60 G. 3 & 1 G. 4, c. 1, s. 1, all meetings and assemblies of persons, for the purpose of training or drilling themselves, or of being trained or drilled, to the use of arms, or for the purpose of practising military exercises, movements, or evolutions, without any lawful authority from His Majesty, or the lieutenant or two justices of the peace of any county or riding, by commission or otherwise for so doing, are prohibited.

Training.] "Every person who shall be present at or attend any such meeting or assembly, for the purpose of training and drilling any other person or persons to the use of arms, or the practice of military exercise, movements, or evolutions, or who shall train or drill any other person or persons to the use of arms, or the practice of military exercise, movements, or evolutions, or who shall aid or assist therein," to be transported for not more than seven years, or imprisoned for not more than two years. *Id. s.* 1. The prosecution must be commenced within six calendar months after the offence committed. *Id. s.* 7.

Commitment.—*For that on —— at ——, a certain meeting and assembly of persons was unlawfully holden, without any lawful authority in that behalf, for the purpose of being trained and drilled to the use of arms, and to the practice of military exercise and evolutions; and that he the said A. B. then and there unlawfully was present at and did attend the said meeting and assembly,* for the purpose of then and there training and drilling other persons then and there present to the use of arms, and to the practice of military exercise and evolutions; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Being trained.] "Every person who shall attend or be present at any such meeting or assembly as aforesaid, for the purpose of being, or who shall at any such meeting or assembly be, trained or drilled to the use of arms, or the practice of military exercise, movements, or evolutions;" fine, and imprisonment not exceeding two years. *Id. s.* 1. The prosecution must be commenced within six calendar months after the offence committed. *Id. s.* 7.

Commitment:—Same as the above form, to the asterisk,* and then thus: *for the purpose of then and there being trained and drilled to the use of arms, and to the practice of military exercise and evolutions; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Dispersing such meeting, &c.] "It shall be lawful for any justice of the peace, or any constable or peace officer, or any other person acting in their aid or assistance to disperse any such unlawful meeting or assembly, and to arrest and detain any person present at, or aiding, assisting, or abetting any such assembly or meeting as aforesaid;" and the justice before whom any person so arrested shall be brought, may commit him for trial for such offence, unless he shall give sufficient bail for his appearance at the next assizes, or general or quarter sessions, "to answer to any indictment which may be preferred against him, for any such offence against this act." *Id. s.* 2.

Actions against justices or peace officers, for anything done by them under this act, shall be commenced within six months after the act done; the venue must be in the county where it was done. Plea, the general issue; the defendant to have double costs if he recover. *Id. s.* 5.

ARRAIGNMENT.

"*See Trial.*"

ARREST.

Under a warrant.] In all cases in which a justice of the peace may legally issue a warrant to arrest a person, the constable or person to whom it is directed may legally execute it, by making the arrest; and this, whether the party be guilty or innocent of the offence mentioned in it, or whether such offence have, in fact, ever been committed, or not. 2 *Hawk.* c. 13, s. 11. If the warrant be directed to a constable, he is bound to make the arrest, if he can, and is punishable for not doing so; but if directed to a private person, he may make the arrest, but he is not punishable for neglecting or refusing to do so. *Id. s.* 27. If the warrant be directed to a particular

constable or person by name, without any general words, he must be acting in the arrest, although others may assist him in making it; *Id. s.* 39; if directed to two or more, any one of them may execute it; if directed to all constables, &c. generally, any constable within the jurisdiction of the justice granting the warrant, may execute it; or if directed to one person by name, "and to all other peace officers in the said county of," &c., generally, or the like, any such peace officer within the jurisdiction of the justice may make the arrest.

Formerly, if the warrant were directed to all constables generally, no constable could execute it out of his own immediate district; 2 *Hawk.* c. 13, s. 30; although if directed to a constable by name, he might execute it in any place within the magistrates' jurisdiction. But now, by stat. 5 G. 4, c. 18, s. 6, it shall be lawful for any constable, headborough, tithingman, borsholder, or other peace officer, for a parish, township, hamlet, or place, to execute any warrant of a justice of the peace, within any parish, township, hamlet, or place, situate within that jurisdiction for which such justice shall have acted when granting such warrant, or when backing or indorsing any such warrant, in like manner as if such warrant had been directed to such constable, &c. specially by name, and notwithstanding the place in which such warrant shall be executed shall not be within the parish, &c. for which he shall be constable, &c. See more upon this subject, *post, tit.* "*Commitment.*"

Before an action can be brought against a constable, for any thing done by him, in obedience to a justices' warrant, a demand of a perusal and copy of the warrant must be made upon him: if he do not give it, within six days, the plaintiff may bring his action against him alone; but if he give it, then the justice must also be made defendant in the action, otherwise the constable, on proof of the warrant at the trial, shall have a verdict; or if the plaintiff make the justice a party, the constable shall still be entitled to a verdict, but the plaintiff, if he recover against the justice, shall also recover against him any costs he may have been obliged to pay to the constable. 34 G. 2, c. 44, s. 6.

He who knowingly opposes an arrest of another for treason, is guilty of treason; if he oppose an arrest for felony, he will be accessory after the fact to the fact of the felony.

Arrest by a constable without a warrant.] If a constable, or indeed any private person, see another commit treason or felony, he may apprehend him; 1 *Hale,* 587; and of course whatever a private individual may do in this respect (*vide infra*), a constable may also do, the only difference being, that the constable must take the offender before a magistrate, but a private person may discharge himself of the offender by giving him in custody to the constable. 2 *Hawk,* c. 13,

s. 7. So a constable may apprehend any person, whom he shall see actually engaged in an affray, *Id. s.* 8, or other breach of the peace. So a constable may apprehend any person, who encourages a prisoner in his custody to resist, *White* v. *Edmunds, Peake,* 89, or otherwise obstructs him in the execution of his duty. *Levy* v. *Edwards,* 1 *Car. & P.* 40.

If a reasonable charge of felony against a person, be made to a constable, the constable will be justified in arresting him, without warrant, although it afterwards turn out that the person was perfectly innocent, or that no felony in fact had been committed. *Samuel* v. *Payne et al. Doug.* 359. *Hobbs* v. *Branscomb,* 3 *Camp.* 420. *Davis* v. *Russell,* 5 *Bing.* 354. *Cowles* v. *Dunbar, Moody & M.* 37. *R.* v. *Ford, R. & Ry.* 329. So on complaint to a constable that a man has threatened to kill another, the constable will be justified in arresting the party complained of, and detaining him, until he can conveniently take him before a magistrate. 2 *Hale,* 88. But it has been holden that a constable is not justified in apprehending a person as a receiver of stolen goods, on the mere assertion of the principal felon. *Isaacs* v. *Brand,* 2 *Stark,* 167. Nor is a constable justified in taking a person into custody for a mere assault, without warrant, unless he himself were present at the time the assault was committed, *Coupey* v. *Henley,* 2 *Esp.* 540, or there be a reasonable ground for apprehending a continuance or renewal of it; *Baynes* v. *Brewster,* 11 *Law J.* 5 *m*; and the same, as to all other breaches of the peace out of his view. 2 *Hawk.* c. 13, s. 8.

Or if a constable have a reasonable suspicion that a man has committed a felony, he may apprehend him. *Ledwith* v. *Catchpole, Cald.* 291. *Lawrence v. Hedger,* 3 *Taunt.* 14. *Nicholson* v. *Hurdwick,* 5 *Car. & P.* 495. *Beckwith* v. *Philby,* 6 *B. & C.* 635. So may a private individual. The difference between the authority of the constable and the private person in this respect is, that the latter is justified only in case it turn out that a felony was in fact committed, but the constable may justify the arrest and detention, whether in fact a felony were committed or not. *Id. per Lord Tenterden, C. J.* And the ordinary grounds of justifiable suspicion are thus enumerated by Hawkins:—1st. The common fame of the country; 2nd. Living a vagrant, idle, disorderly life, without any visible means to support it; 3rd. Being in company with known offenders at the time the offence was committed, or at other times; 4th. Being found under circumstances inducing a strong presumption of guilt, as for instance, having stolen goods in his possession, and not being able to give an account of his having honestly come by them, or the like; 5th. Behaving in such a manner as to betray a consciousness of guilt, as by making no answer when charged with the offence, or absconding, or the like. 2 *Hawk. c.* 12, *s.* 9—14.

Arrest by a private person without warrant.] All persons present when a felony is committed or a dangerous wound given, not only may apprehend the offender, but they are bound to do so. 2 *Hawk. c.* 12, *s.* 1. *And see Hancock* v. *Baker*, 2 *B. & P.* 260. *R.* v. *Hunt*, *Ry. & M.* 93. And the same as to treason. Also, if a private person see another on the point of committing treason or felony, or doing an act which would manifestly endanger the life of another, he may lay hold on him, and detain him until it may be presumed that he has changed his purpose. *Id. s.* 19. So, it has been holden, that he may arrest one whom he sees cheating with false dice. *Id. s.* 20. So, if he be present at an affray, he may stay the affrayers until the heat is over, and then deliver them over to the constable, and he may stop others coming to join either party. *Id. c.* 13, *s.* 8. But after the affray is ended, the parties cannot be arrested without warrant. *Id.* 2 *Inst.* 52.

So, upon a case of strong suspicion, a private person may justify the apprehending of another for felony, if in fact such a felony were committed. *See Beckwith* v. *Philby*, &c. *ante*, p. 129. But a suspicion that a party has committed a misdemeanor on a former occasion, will not justify a private person in giving him in charge to a constable; and there is no distinction in this respect between one kind of misdemeanor and another. *Fox* v. *Gaunt*, 3 *B.* & *Ad.* 798. *And see Matthews* v. *Biddulph*, 11 *Law J.* 13, *m.*

Any person found committing an offence, punishable either by indictment or upon summary conviction by stat. 7 & 8 G. 4, c. 29, (the Larceny Act,) or stat. 7 & 8 G. 4, c. 30, (the Malicious Injuries Act,) except the offence of angling in the day-time, may immediately be apprehended without warrant, by any peace-officer, or the owner of the property with respect to which the offence was committed, or by his servant, or by any person authorized by him, and forthwith taken before some neighbouring jnstice of peace. 7 & 8 *G.* 4, *c.* 29, *s.* 63. 7 & 8 *G.* 4, *c.* 30, *s.* 28. The offender in these cases must be either taken in the very act of committing the offence, or on fresh pursuit. *Hanway* v. *Boultbee*, 1 *Moody & R.* 15, *R.* v. *Curran*, 3 *Car. & P.* 397.

So, by the Vagrant Act, 5 G. 4, c. 83, s. 6, any person may apprehend a party found offending against that act, and take him before a justice, or deliver him to a constable. In this case also, the party must be taken, either in the act of committing the offence, or upon fresh pursuit. *R.* v. *Howarth*, 1 *Ry. & M.* 207.

Arrest by private person upon hue and cry.] Upon hue and cry raised or levied, a private person may arrest the alleged offender, 2 *Hawk*, *c.* 12, *s.* 4, 14, although no other circumstance of suspicion attach to him. 2 *Inst.* 52.

Arrest by a magistrate.] In all cases where a constable or private person may arrest without warrant, a magistrate of course may do so. 2 *Hawk. c.* 13, *s.* 13. So, he may lawfully, by word of mouth, authorize any one to arrest a person, who is guilty of a felony or an actual breach of the peace in his presence; *Id. s.* 14. 2 *Hale*, 86; and such command is a good warrant, without writing. 2 *Hale*, 86.

When.] An arrest without warrant may be made at any time, even on a Sunday. Also, as a warrant, in ordinary cases, is not returnable at any particular time, no time is in fact limited for making the arrest under it: but it should be made without any unnecessary delay. Where a warrant required the constable to arrest the party, to the end that he might become bound to appear at the next sessions, &c., this was holden to mean the next sessions after the arrest, and not merely the next sessions after the granting of the warrant, and that therefore an arrest after the latter sessions was good. *Mayhew* v. *Parker*, 8 *T. R.* 110. By stat. 21 C. 2, c. 7, s. 6, an arrest under a warrant cannot be made on a Sunday, "except in cases of treason, felony, or breach of the peace;" but a very liberal construction is put upon these latter words; and therefore it has been holden, that a warrant to apprehend a man, that he might find sureties for his good behaviour, was not within the act, but rather within the exception, and that the party therefore might be taken on a Sunday. *Johnson* v. *Colston*, *T. Rayn.* 250. But it has been decided that a warrant for penalties under the Lottery Act, at the suit of a common informer, being merely in the nature of an execution in a civil action, could not legally be executed on a Sunday. *R.* v. *Myers*, 1 *T. R.* 265. The arrest, with or without warrant, may be made in the night-time, as well as in the day. 9 *Co. Rep.* 66.

Where.] An arrest without warrant, may be made anywhere; an arrest under a warrant, anywhere within the jurisdiction of the justice granting or backing it. *See post, tit.* "*Commitment.*"

How.] An arrest is usually made by actually laying hands on the party and detaining him. But if the officer or other person say to him, "I arrest you," and the party acquiesce and go with him, this will be a good arrest; *See Russen* v. *Lucas*, 1 *Car. & P.* 153; although it would be otherwise, if instead of submitting, he had escaped, *Id.*; and merely showing him the warrant, and his then voluntarily accompanying the officer to a magistrate, would not be in law an arrest. *Arrowsmith* v. *Le Mesurier*, 2 *New Rep.* 211. If the party arrested demand to see the warrant, the constable, if he be a known officer, and acting within his precinct, is not bound to show it to him;

but otherwise, where the arrest is by a constable out of his precinct, or by a private person; 2 *Hawk. c.* 13, *s.* 28; and where the arrest is without warrant, it is sufficient for a constable to state merely that he arrests the party in the Queen's name; 1 *Hale*, 589; but a private person, if required, must, it should seem, state to the party arrested the cause of the arrest.

If the party to be arrested be in a house, and the doors be fastened, then, according to Hawkins, the doors may be broken open to arrest him (after first demanding admittance and being refused,) in the following cases: 1st, upon a *capias*, on an indictment; 2nd, upon a warrant on a conviction, or for the purpose of his finding sureties for the peace or good behaviour; 3rd, where one, known to have committed treason or felony, or to have given another a dangerous wound, is pursued by a constable or private person, with or without warrant; 4th, where an affray is made in a house, in the view or hearing of a constable, or where affrayers fly to a house, and are immediately pursued by the constable; 5th, where a person lawfully arrested escapes and flies to a house: in these several cases, the doors of the house may be broken open to arrest the party or to suppress the affray, if upon demand made for the purpose, the parties within refuse to open them. 2 *Hawk. c.* 14, *s.* 1—9. And the same, upon a warrant on a charge or suspicion of felony. 2 *Hale*, 117. So, where a private person, without warrant, broke open the door of a house, and imprisoned the occupier, to prevent him from murdering his wife, he was holden to be justified. *Handcock* v. *Baker*, 2 *B.* & *P.* 260. And it is immaterial whether it be the party's own house, or the house of a stranger, except that in the latter case the officer is justified only in case the party he seeks be actually in the house at the time. 2 *Hale*, 117.

Where a party may lawfully be arrested for felony, and he, knowing the cause, flies or resists, so that he cannot be taken otherwise than by killing him, the constable pursuing him will be justified in killing him; or a private person will in like manner be justified, if he can prove that the deceased was actually guilty of the felony. 2 *Hale*, 118, 119. But where the offence for which the party is to be arrested is a misdemeanor only, even a constable will not be justified in killing him, although he cannot otherwise be taken; *Id.* 117; unless indeed he assault the officer, for the purpose of escaping from him, in which case, if the officer, in standing on his guard (for he need not retreat, as in the ordinary cases of *se defendendo*,) kill him, this will not be felony. *Id.* 118.

Where a party is arrested upon a charge or suspicion of crime, if the arrest be made by a constable, he should take him before a justice of the peace, as soon as it is possible for him to do so, *see Wright* v. *Court*, 4 *B.* & *C.* 596, and in the

mean time he should keep him safely in his custody. 2 *Hale*, 120. And the same, where the arrest is by a private person, under a warrant. But if the arrest be by a private person, without warrant, he may deliver the party to a constable, or he may take him to the common gaol, or before a justice of the peace. 1 *Hale*, 589. And the party arrested should not be treated with any unnecessary harshness, beyond what is actually necessary for his safe custody; and therefore it has been holden, that a constable has no right to handcuff a person whom he has apprehended on a suspicion of felony, unless he have attempted to escape, or it be necessary to prevent him from escaping. *Wright* v. *Court*, *supra*.

ARSON.

See "Burning."

ASSAULT.

1. *Common assault and battery*, p. 133.
2. *Summary conviction for a common assault*, p. 135.
3. *Assaults in particular cases*, p. 139.
——— *upon justices, &c. in cases of wreck*, p. 139.
——— *upon peace or revenue-officers*, p. 139.
——— *to prevent apprehension*, p. 141.
——— *to prevent seamen or keelmen, &c. from working*, p. 141.
——— *to prevent the free sale or conveyance of grain*, p. 142.
——— *in pursuance of conspiracy to raise wages*, p. 142.
4. *Other assaults*, p. 142.
——— *assault with intent to commit a felony*, p. 142.
——— *indecent assaults*, p. 143.
5. *Conviction for an assault, upon a prosecution for a felony*, p. 144.

1.—*Common Assault and Battery.*

What.] An assault is an attempt to do a personal injury to another. An attempt to rob another, an attempt to commit a rape, an attempt to have carnal knowledge of a girl under ten years of age, and the like, are called assaults. But in its usual and restricted sense, a common assault means an attempt

or offer, with force and violence, to do a corporal hurt to another: as by striking at him, with or without a weapon; or presenting a gun at him, at a distance to which the gun will carry, provided it be so loaded that it can be discharged; *R.* v. *James*, 1 *Car.* & *K.* 530; or pointing a pitchfork at him, whilst standing within the reach of it; or holding up one's fist at him; or by any other rash act, done in an angry or threatening manner. 1 *Hawk. c.* 62, *s.* 1. So, riding towards a man with intent to do him a corporal injury, so that he was obliged to run away to avoid it, was holden by Lord Tenterden, C. J. to be an assault. *Martin* v. *Shoppee*, 3 *Car.* & *P.* 373. So, where it was proved that A. advanced in a threatening attitude with an intention to strike B. so that his blow would almost immediately have reached B. if he had not been stopped; Tindal, C. J. held that this was an assault in point of law, although it appeared that at the particular moment when A. was stopped, he was not near enough for his blow to take effect. *Stephens* v. *Myers*, 4 *Car.* & *P.* 349.

A battery is an injury, however small, actually done to the person of another, in an angry, revengeful, rude, or insolent manner, as by spitting in his face, or in any way touching him in anger, violently jostling him out of the way, or the like. 1 *Hawk. c.* 62, *s.* 2.

But it is no battery, to lay one's hand gently on another, against whom an officer has a warrant, and to tell the officer this is the man he seeks; 1 *Hawk. c.* 62, *s.* 2; or to lay one's hand on a man, if it be necessary to do so, in order to serve him with process. *Harrison* v. *Hodgson*, 10 *B.* & *C.* 445. Or, if a horse, being suddenly frightened, run away with a man, without his fault, and run against and injure another man, this is no assault in the rider, for which even a civil action could be maintained. *Gibbon* v. *Pepper*, 1 *L. Raym.* 38, 2 *Salk.* 637.

So, if an officer, having a warrant against a man, who will not suffer himself to be arrested, beat or wound him in an attempt to take him; or, if a parent in a reasonable manner chastise his child, or a master his servant, or a schoolmaster his scholar, or a gaoler his prisoner; or, if one confine a friend who is insane, and bind or beat him, in such a manner as is proper in his circumstances; or, if a man force a sword from one, who threatens to kill another therewith; or, if a man gently lay his hand upon another, and thereby stay him from inciting a dog against a third person; or, if I beat one (without wounding him, or throwing at him a dangerous weapon,) who wrongfully endeavours with violence to dispossess me of my lands or goods, or the goods of another delivered to me for safe custody, and will not desist upon my laying my hand gently on him and disturbing him; or, if a man beat or (as some say) wound or maim one, who makes an assault upon him, or upon

his wife, parent, child or master, especially if it appear that he did all he could to avoid fighting before he gave the wound; or, if a man fight with or beat one who attempts to kill a stranger: these and the like are not deemed breaches of the peace, 1 *Hawk. c.* 60, *s.* 3; and the defendant in such cases may justify the battery, by giving the special circumstances in evidence under the plea of not guilty. *Id. c.* 62, *s.* 3. But if two parties go out for the purpose of fighting with their fists, and they strike one another, they are each of them guilty of an assault, and it is quite immaterial which of them struck the first blow. *Per Coleridge, J. in R.* v. *Lewis*, 1 *Car.* & *K.* 419. So, where it appeared that the defendant, although he at first struck in his defence, afterwards continued to strike the prosecutor from revenge, after the necessity for it had ceased, he was holden guilty of an assault and battery. *R.* v. *Driscoll*, 1 *Car.* & *M.* 214. Where an excise-officer gave a man a search warrant to look at, who refused to deliver it back to him, and a scuffle ensued: on an indictment for an assault, Lord Tenterden left it to the jury to say, whether the officer had used more force than was necessary to recover possession of the warrant. *R.* v. *Milton, Moody* & *M.* 107. If a man conduct himself in a disorderly manner in a public house, and upon the landlord's requesting him to depart, he refuse to do so, the landlord is justified in laying hands upon him to put him out, *Howell* v. *Jackson*, 6 *Car.* & *P.* 723. *Moriarty* v. *Brooks*, *Id.* 684.

The punishment for a common assault and battery, when the party is prosecuted by indictment, is, fine or imprisonment, or both; and the defendant may be ordered to find sureties for keeping the peace.

Commitment:—*On* ——, *at* ——, *unlawfully did assault and beat one C. D. And you the said keeper*, &c.

2. *Summary Conviction for a Common Assault.*

In what cases.] By stat. 9 G. 4, c. 31, s. 27, reciting that it is expedient that a summary power of punishing persons for common assaults and batteries should be provided under the limitations thereinafter mentioned, it is enacted that "where any person shall unlawfully assault or beat any other person, it shall be lawful for two justices of the peace, upon complaint of the party aggrieved, to hear and determine such offence; and the offender, upon conviction thereof before them, shall forfeit and pay such fine as shall appear to them to be meet, not exceeding, together with costs (if ordered), the sum of 5*l.*"

Provided "that nothing herein contained shall authorize any justices of the peace to hear and determine any case of as-

sault or battery, in which any question shall arise as to the title to any lands, tenements or hereditaments, or any interest therein or accruing therefrom, or as to any bankruptcy or insolvency, or any execution under the process of any court of justice." *Id. s.* 29.

Provided also, "that in case the justices shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is, from any other circumstance, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as they would have done before the passing of this act." *Id. s.* 29.

And by stat. 5 & 6 W. 4, c. 19, s. 38, reciting the above provisions, and that it was expedient that they should be extended to similar offences committed on board merchant ships, it was enacted that in case of any assault or battery, which shall be committed "on board any merchant ship belonging to any subject of the United Kingdom, in any place at sea or out of His Majesty's dominions, it shall be lawful for any two justices of the peace in any part of His Majesty's dominions, upon complaint of the party aggrieved, to hear and determine any such complaint, and to proceed and make such adjudication thereon, as by the said act any two justices are empowered to do, subject however to such provisions and limitations as are contained in the said act with respect to the cases of assault and battery therein mentioned; and the fine or forfeiture to be imposed in any such case, shall be payable to the merchant seamen's hospital or institution at or nearest to the port or place where such adjudication shall be made."

Where the act done appeared from the depositions to have been committed with an unnatural intent, but not to have been attended with violence; and an application was therefore made for a certiorari to remove the conviction, for the purpose of having it quashed, on the ground that the offence was not within the above stat. 9 G. 4, c. 31: the court said that they could not interfere, as no want or excess of jurisdiction appeared upon the face of the conviction; and the evidence, of which the magistrates were in their discretion to judge, did not show clearly an intention to commit felony. *Anon.* 1 *B. & Ad.* 382.

Proceedings.] The charge must be made on oath; it may be made to one justice of the peace, and he may thereupon issue his summons for the party's attendance before two justices. 9 *G.* 4, *c.* 31, *s.* 33. If the party attend, the justices may then proceed to hear and determine the complaint. If he do not attend, then, "upon proof of the due service of

the summons upon such person, the justices may either proceed to hear and determine the case *ex parte*, or may issue their warrant for apprehending such person and bringing him before them; or, the justice before whom the charge shall be made, may, if he shall so think fit, issue such warrant in the first instance, without any previous summons." *Id.* The prosecution must be commenced [that is, the charge must be made] within three calendar months after the commission of the offence. *Id. s.* 34.

If the justices, upon the hearing of the case, "shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, they shall forthwith make out a certificate under their hands, stating the fact of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred." *Id. s.* 27. And such certificate, or (if the party be convicted) his paying the penalty or undergoing the punishment, shall be a bar to all other proceedings, civil or criminal, for the same offence. *Id. s.* 28. *See Harding* v. *King*, 6 *Car. & P.* 427. The following may be the form of the certificate:—

Whereas A. B., of ——, *in the county of Berks, labourer, heretofore, on the* —— *day of* ——, *in the year of our Lord* ——, *came before J. P. one of Her Majesty's justices of the peace for the said county of Berks, and complained to and informed the said J. P., that C. D. of* ——, *in the county aforesaid, labourer, on* ——, *at* ——, *did unlawfully assault and beat him the said A. B.; and whereas the said C. D. being duly summoned to answer the said charge, appeared before us, two of Her Majesty's justices of the peace for the county aforesaid, at* ——, *and the said A. B. also then and there attended before us for the purpose of proving the offence charged upon the said C. D. in and by the said complaint: We the said justices do hereby certify, that having heard what the said A. B. had to allege in that behalf, and the evidence adduced by him in proof of the said offence, and having also heard what the said C. D. then and there alleged in his defence, and it manifestly appearing to us* ["*that the said C. D. was not guilty of the assault and battery charged upon him in and by the said complaint,*" or "*that the said C. D. was lawfully justified in the committing of the assault and battery charged upon him, in and by the said complaint,*" or "*that the assault and battery proved, was so trifling, as not to merit any punishment.*"] *We thereupon then and there dismissed the said complaint. Given under our hands, the* —— *day of* ——, *in the year of our Lord* ——.

E. F.
G. H.

Where, to an action for an assault and battery, the defendant pleaded a complaint before justices for the same assault, which complaint was dismissed, and the justices granted the defendant a certificate stating the fact of the dismissal; but because the plea did not show that the certificate stated the particular ground of the dismissal, the plaintiff demurred to it: and the court held the plea to be bad; the statute states three grounds for a dismissal; and a certificate, to be a bar to a further proceeding for the same assault, must show upon which of these grounds the complaint was dismissed. *Skuse* v. *Davies, MS. Q. B. T.* 1839, 8 *Law J.* 75, *m.*

The application for this certificate should be made without delay. The statute requires the justices to make it out "forthwith;" and therefore where the complaint was dismissed on the 28th November, but no application made for the certificate until the 10th January following, the court held this not to be within the meaning of the statute, and that it was no defence to an indictment for the same assault; and Lord Denman, C. J., held that the application should have been made directly upon the dismissal of the complaint, or that some step, at all events, should have been taken towards it, before the justices had separated. *R.* v. *Robinson, MS. M.* 1840, 10 *Law J.* 9, *m.* 12 *Ad.* & *El.* 672.

Conviction.] The following is the form of the conviction, as given by the statute, or it may be in any other form of words to the same effect. *Sect.* 35.

Berkshire: Be it remembered that on ——, *at* ——, *C. D. is convicted before us, E. F. and G. H., two of Her Majesty's justices of the peace for the said county: for that he the said C. D.* [*on* ——, *at* ——, *did unlawfully assault and beat one A. B.*]; *and we the said justices adjudge the said C. D. for his said offence,* to forfeit and pay the sum of* [*five pounds,*] *and also to pay the sum of* —— *for costs; and* [*in default of immediate payment of the said sums, to be imprisoned in the* —— *for the space of* ——, *unless the said sums shall be sooner paid;* or, if time be given for the payment of the penalty, &c., "*We order that the said sums shall be paid by the said C. D. on or before the* —— *day of* ——]"; *and we direct that the said sum of* [*five pounds*] *shall be paid to I. K. of* —— *aforesaid, in which the said offence was committed, to be by him applied according to the directions of the statute in that case made and provided; and we order that the said sum of* —— *for costs, shall be paid to the said A. B. Given under our hands the day and year first above-mentioned.*

E. F.
G. H.

Penalty, how recovered and applied.] If the penalty be not paid, either immediately, or within the time appointed by the conviction, the justices may commit the offender "to the common gaol or house of correction, there to be imprisoned for any time not exceeding two calendar months, unless such fine and costs be sooner paid." 9 *G.* 4, *c.* 31, *s.* 27.

The fine shall be paid to one of the overseers of the poor or other officer of the parish, township, or place where the offence was committed, and by him paid over to the use of the general rate of the county, riding, or division in which such parish, &c. is situate, whether the same shall or shall not contribute to such general rate; and the evidence of any inhabitant of such county shall notwithstanding be admitted in proof of the offence. 9 *G.* 4, *c.* 31, *s.* 27.

In the case of assaults on board merchant vessels, however, we have seen (*ante*, p. 136,) that the penalty shall be paid to the merchant seaman's hospital or institution at or nearest to the port or place where the adjudication shall be made.

3. *Assault and Battery in Particular Cases.*

Upon justices, &c. in case of wreck.] "If any person shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized, on account of the exercise of his duty, in or concerning the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water:" transportation for seven years, or imprisonment with or without hard labour, for such term as the court shall award. 9 *G.* 4, *c.* 31, *s.* 34.

Commitment:—*On* ——, *at* ——, *unlawfully did assault one C. D., and him, the said C. D. did then and there strike and beat* [or *wound,*] *on account of the exercise of his the said C. D.'s duty in and concerning the preservation of a certain vessel then and there in distress* [or as the case may be,] *he the said C. D. being then and there a* [*magistrate,* or *officer,* or *person*] *lawfully authorized in that behalf; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Upon peace or revenue officers.] An assault upon "any peace or revenue officer, in the due execution of his duty, or upon any person acting in aid of such officer," is punishable with imprisonment, with or without hard labour, for not more than two years, and the court may also fine the offender, and

require him to find sureties for keeping the peace. 9 *G.* 4, *c.* 31, *s.* 25.

Commitment:—*On* ——, *at* ——, *unlawfully did assault and beat one C. D., he the said C. D. being then and there a* [*peace-officer, to wit, a constable of the said parish,* or "*revenue-officer, to wit, an officer of Her Majesty's excise,*"] *and in the due execution of his duty as such* [*constable* or *revenue-officer*] *then and there being: against the form of the statute in such case made and provided. And you the said keeper, &c.* If the assault were upon a person who was acting in aid of a constable, &c. say, "*he the said C. D., then and there acting in aid of one E. F., a peace-officer,*" &c. as above.

Also, by stat 1 & 2 W. 4, c. 41, (for the appointment, &c. of special constables), s. 11, "if any person shall assault or resist any constable appointed by virtue of this Act, whilst in the due execution of his office, or shall promote or encourage any other person so to do, every such person shall, on conviction thereof before two justices of the peace, forfeit and pay for such offence any sum not exceeding 20*l.*; or, shall be liable to such other punishment, upon conviction on any indictment or information for such offence, as any persons are by law liable, for assaulting any constable in the execution of the duties of his office." The conviction may be in the following form, "or to the like effect." *Id. s.* 17.

Northumberland to wit: Be it remembered that on ——, *at* ——, *C. D. is convicted before us, E. F. and G. H., two of Her Majesty's justices of the peace of the said county, for that he the said C. D. did on* ——, *at* ——, *unlawfully assault &c.* [as the case may be] *one C. D., he the said C. D. then and there being a special constable, duly appointed in that behalf, and in the due execution of his office as such special constable, then and there being; against the form of the statute in such case made and provided. And we do adjudge that the said C. D. shall for the said offence forfeit the sum of* ——, *and shall pay the same* [*immediately,* or *on or before the* —— *day of* ——] *to T. W., being one of the overseers of the poor of* ——, *to be by him applied according to the directions of the statute in that case made and provided. Given under our hands the day and year first above written.*

E. F.
G. H.

The penalty is to be paid to the overseer of the poor of the parish, &c. in which the offence was committed, to be by him paid over to the use of the public rate of the county, &c., in which such parish, &c. is situate. *Id. s.* 15. If the penalty be

not paid, it may be levied by distress, and for want of sufficient distress, "the offender shall be imprisoned, with or without hard labour, in the common gaol or house of correction, as to the convicting justices shall seem meet, for any term not exceeding one calendar month, where the sum to be paid shall not exceed 5*l.*, or for any term not exceeding two calendar months in any other case;" the imprisonment to cease on payment of the sum due. *Id. s.* 19. *See tit.* "*Constable.*"

In either of these cases, however, the justices may proceed summarily on stat. 9 *G.* 4, *c.* 31, *ante*, p. 135.

To prevent apprehension.] An "assault upon any person, with intent to resist or prevent the lawful apprehension or detainer of the party so assaulting, or of any other person for any offence for which he or they may be liable by law to be apprehended or detained," is punishable with imprisonment, with or without hard labour, for not more than two years, and the court may also fine the offender, and require him to find sureties for keeping the peace. 9 *G.* 4, *c.* 31, *s.* 25.

Commitment:—*On* ——, *at* ——, *unlawfully did assault and beat one C. D., with intent thereby then and there to resist and prevent the lawful apprehension* [or *detainer*] *of him the said A. B. for* [*having feloniously stolen the goods of one I. K.*]; *against the form of the statute in such case made and provided. And you the said keeper*, &c.

To prevent seamen, or keelmen, &c. from working.] "If any person shall unlawfully and with force hinder any seaman, keelman, or caster, from working at or exercising his lawful trade, business, or occupation, or shall beat, wound, or use any other violence to him, with intent to deter or hinder him from working at or exercising the same:" such offender may be convicted before two justices of the peace, and imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three calendar months. 9 *G.* 4, *c.* 31, *s.* 26. The conviction may be as follows:—

Berkshire: Be it remembered that on ——, *at* ——, *C. D. is convicted before us, E. F. and G. H., esquires, two of Her Majesty's justices of the peace of the said county, for that he the said C. D. on* ——, *at* ——, *unlawfully did beat one A. B., a keelman* [or as the case may be], *with intent thereby then and there to deter and hinder him the said A. B. from working at or exercising his said lawful trade, business, and occupation of keelman as aforesaid, against the form of the statute in such case made and provided. And we, the said justices, adjudge the said C. D. for his said offence, to be imprisoned in the —— and*

there kept to hard labour for the space of ——. *Given under our hands the day and year first above mentioned.*

To prevent the free sale or conveyance of corn, &c.] "If any person shall beat, wound, or use any other violence to any person, with intent to deter or hinder him from selling or buying any wheat or other grain, flour, meal, or malt, in any market or other place; or, shall beat, wound, or use any other violence to any person having the care or charge of any wheat or other grain, flour, meal, or malt, whilst on its way to or from any city, market town, or other place, with intent to stop the conveyance of the same:" such offender may be convicted before two justices of the peace, and imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding three calendar months. 9 *G.* 4, *c.* 31, *s.* 26.

The conviction may be the same as the last form, except in the description of the offence, which may be thus: *for that he the said C. D., on* ——, *at* ——, *unlawfully did beat one A. B., with intent thereby then and there to deter and hinder him the said A. B. from selling* [or *buying*] *certain wheat in the market of* ——, *in the said county.*

Or, *for that he the said C. D., on* —— *at* ——, *unlawfully did beat one A. B.* (*he the said A. B. then and there having the care and charge of certain wheat, whilst on its way to the market town of* ——, *in the county aforesaid*), *with intent thereby then and there to stop the conveyance of the said wheat.*

In pursuance of conspiracy to raise wages.] An "assault committed in pursuance of any conspiracy to raise the rate of wages," is punishable with imprisonment, with or without hard labour, for not more than two years, and the court may also fine the offender, and require him to find sureties for keeping the peace. 9 *G.* 4, *c.* 31, *s.* 25.

Commitment:—*On* ——, *at* ——, *unlawfully did assault one A. B., in pursuance of a conspiracy between him the said C. D. and others to raise the rate of their wages; against the form of the statute in such case made and provided. And you the said keeper*, &c.

As to assaults upon deer-keepers, *see Vol.* 2, *tit.* "*Larceny,*" *and Index.*

4. *Other Assaults.*

Assault with intent to commit a felony.] An "assault with intent to commit a felony,"—is punishable with impri-

sonment, with or without hard labour, for not more than two years; and the court may also fine the offender, and require him to find sureties for keeping the peace. 9 *G.* 4, *c.* 31, *s.* 25. It has been already remarked (*ante*, p. 133), that an assault is an attempt to do a personal injury; and where that injury, if effected, would be a felony (as in the case of rape, the violation of girls under the age of ten years, unnatural offences, and the like), for all attempts to commit it, where the felony is not completed, the offender may be indicted and punished under the above section. Also, upon the trial of an indictment for any felony, which includes an assault against the person, the jury, if they acquit the party of the felony, may find him guilty of the assault, if the evidence will warrant such a finding. 1 *Vict. c.* 85, *s.* 11. *Vide post*, p. 144.

Commitment:—*On* ——, *at* ——, *did unlawfully assault one A. B. with intent* [*her the said A. B., then and there violently and against her will feloniously to ravish and carnally to know*, or as the case may be, describing the felony, as in a commitment for it;] *against the form of the statute in such case made and provided. And you the said keeper*, &c.

Indecent assaults.] Taking indecent liberties with the person of another, female or male, against her or his will, or where it is merely submitted to from fear, or from submission to the authority which the offender may have over the party,—is deemed in law an assault, and punishable as such. Where upon an indictment against a schoolmaster, for an assault with intent to commit a rape upon one of his female scholars, with a second count for a common assault, it appeared from the evidence, that he did not actually attempt to commit a rape, nor perhaps intend it, but he had taken most indecent liberties with the person of the girl, and without her consent, although she did not actually offer resistance: the judges were of opinion that the evidence was fully sufficient to support the count for a common assault, although not for the assault with intent to commit a rape. *R.* v. *John Nichol*, *R.* & *Ry.* 130. *See also R.* v. *Butler*, 6 *Car.* & *P.* 368. So, where a girl went to a quack doctor, to be cured of some complaint, and he, pretending that he could not otherwise judge of her illness, than by seeing her naked, pulled off her clothes; being indicted for this specially, and also upon a count for a common assault, the jury being of opinion that the defendant did not really think that his seeing the girl naked would assist him in judging of her illness, found him guilty; and the court held the conviction on the count for a common assault good. *R.* v. *Rosinski*, *M. S.* & *Ry.* & *M.* 19, *See post, vol.* 2, *tit.* "*Rape.*"

The commitment in such a case, may be as for a common assault.

5. *Conviction for an Assault, upon a Prosecution for a Felony.*

By stat. 1 Vict. c. 85, s. 11, on the trial of a person for any of the offences hereinbefore mentioned, [administering poison, or stabbing, cutting, or wounding, &c., with intent to murder, s. 2;—attempting to administer poison, or shooting or attempting to shoot at any person, or attempting to drown, suffocate or strangle any person, with intent to murder, s. 3;—shooting or attempting to shoot at any person, or stabbing, cutting or wounding him, with intent to maim, disfigure or disable him, or to do him grievous bodily harm, or with intent to resist lawful apprehension or detainer of any person, s. 4;—sending any explosive substance, or throwing upon any person any corrosive fluid, with intent to burn, maim, disfigure or disable any person, s. 5;—administering poison, &c. or using any instrument, to procure abortion, s. 6;] or for any felony whatsoever, where the crime charged shall include an assault against the person:—it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of the assault, if the evidence shall warrant such finding; the court may thereupon order him to be imprisoned for not more than three years, s. 11, with hard labour, s. 8. This may be done upon an indictment for manslaughter; *R.* v. *Lewis*, 1 *Car.* & *K.* 419; but not upon an indictment for burglary with intent to commit a rape. *R.* v. *Watkins*, *Car.* & *M.* 264.

ASSIZES.

"*See Justices.*"

ATTAINDER.

"*See Trial.*"

ATTEMPTS TO MURDER, &c.

Attempt to murder by poison.] "Whosoever shall administer to, or cause to be taken by, any person, any poison or

other destructive thing," with intent to commit murder, shall be guilty of felony, and suffer death. 1 *Vict. c.* 85, *s.* 2. To bring a case within this section, it must appear that the poison was actually taken into the stomach. *See R.* v. *Cadman, Ry. & M.* 114, *and per Park, J., in R.* v. *Harley*, 4 *Car. & P.* 369; it is not sufficient that it should be merely offered or tendered to the party, or left for him in order that he might take it. *See R.* v. *Lewis*, 6 *Car. & P.* 161. *R.* v. *Harley, supra.* If the evidence leave this doubtful, the offender may be committed for an attempt to poison, as shall presently be mentioned.

And "whosoever shall attempt to administer to any person any poison or other destructive thing," with intent to commit murder, shall, although no bodily injury be effected, be guilty of felony, and shall be transported for life, or for not less than 15 years, or be imprisoned, with or without hard labour, for not more than three years. 1 *Vict. c.* 85, *s.* 3. Where A. gave poison to B., with directions to administer it to C.; and B. instead of doing so, handed it over to C., telling him at the same time the instructions A. had given him: it was holden that this was not an attempt to administer the poison by A. *R.* v. *Williams & Rees*, 1 *Car. & K.* 589.

Commitment:—*On* ——, *at* ——, *did feloniously administer to one A. B. one ounce weight of a certain poison called white arsenic* [or *did feloniously attempt to administer to, &c.* as above, and stating the particulars of the attempt] *with intent thereby then and there feloniously, wilfully, and of his malice aforethought, the said A. B. to poison, kill and murder; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Attempt to murder by stabbing, shooting, &c.] Whosoever shall "stab, cut, or wound any person, or shall by any means whatsoever cause to any person any bodily injury dangerous to life," with intent to murder, shall be guilty of felony, and suffer death. 1 *Vict. c.* 85, *s.* 2. A contused wound, caused by a piece of metal or the like, not used for cutting, is not a cutting within the Act; *R.* v. *Adams*, 1 *Russ.* 597; but it is a wounding, within the meaning of it: and where such an instrument, though not commonly used for the purpose, was capable of cutting, and actually did give the prosecutor an incised wound, it was holden to be a cut within the meaning of the Act. *R.* v. *Hayward, R. & Ry.* 78. *R.* v. *Peter Atkinson, Id.* 104. But a wound within the meaning of the act may be inflicted with a hammer or bludgeon or other blunt instrument, if it break the skin and draw blood. *R.* v. *Withers, Ry. & M.* 294. *R.* v. *Payne et al.*, 4 *Car. & P.* 558. *R.* v. *Wood & M'Mahon, Ry. & M.* 278. So, knocking a man down, and

kicking him in the face with great violence, breaking the skin and drawing blood, has been holden to be a wounding. *R.* v. *Shadbolt*, 5 *Car.* & *P.* 504. The violence with which the act is committed is to be considered more with reference to the intent with which it is done. But it is immaterial in what part of the body the wound is given, if it otherwise appear to have been given with the intent mentioned in the statute. *See* *R.* v. *Griffith*, 1 *Car.* & *P.* 298.

As to the general offence here mentioned, namely, "any bodily injury dangerous to life," it was holden that striking and kicking a child, knocking its head against a beam in the ceiling, and then throwing it down upon a brick floor, so as to cause a concussion of the brain, amounted to this offence, if proved to be done with intent to murder; but Patteson, J. held that there must be proof of a positive intent to murder; merely proving that the act was done under circumstances, that if death had ensued, it would have been murder, would not be sufficient, if murder were not in fact intended. *R.* v. *Cruse et ux.*, 8 *Car.* & *P.* 541.

Commitment:—*On* ——, *at* ——, *did feloniously stab and wound one A. B., in and upon the right side of the belly and other parts of the belly* [or *cause unto one A. B. a certain bodily injury dangerous to life, to wit* ——, *by then and there feloniously* —— here state the act done,] *with intent thereby then and there feloniously, wilfully, and of his malice aforethought, the said A. B. to kill and murder; against the form of the statute in such case made and provided. And you the said keeper*, &c.

And whosoever shall "shoot at any person, or shall by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person," with intent to murder, shall, although no bodily injury shall be effected, be guilty of felony, and be transported for life, or not less than 15 years, or be imprisoned with or without hard labour for not more than three years. 1 *Vict. c.* 85, *s.* 3. Where the prisoner had but the barrel of a percussion gun, detached from the stock and lock, but by striking the percussion cap, which was on the nipple of the barrel, he fired it at, and shot B.: this was holden to be a shooting within the meaning of the Act. *R.* v. *Coates*, 6 *Car.* & *P.* 394. This clause of the statute, however, relates more particularly to shooting without wounding; shooting and wounding being within the second section, *ante*, p. 145. As to the attempt to shoot, it has been holden that the gun or pistol, at the time the trigger is drawn, &c. must be in a state to effect the injury intended; and therefore where the pistol, though loaded, was not primed, *R.* v. *Wm. Carr*, *R.* & *Ry.* 377. *R.* v. *James*, *Car.* & *K.* 530, or where, although

loaded and primed, yet the touch-hole was plugged up, so that it could not be fired, *R.* v. *Harris*, 5 *Car.* & *P.* 159, it was holden not to be a case within the Act.

Commitment for shooting:—*On* ——, *at* ——, *with a certain gun, loaded with powder and divers leaden shots, feloniously did shoot at and against one A. B., with intent thereby then and there feloniously, wilfully, and of his malice aforethought, the said A. B. to kill and murder; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Commitment for attempting to shoot:—*On* ——, *at* ——, *certain loaded arms, to wit, a pistol, then and there loaded with powder and one leaden bullet, at and against one A. B., feloniously did present, point, and level, and then and there, by drawing the trigger of the said pistol* [or as the case may be,] *feloniously did attempt to discharge the same at and against the said A. B., with intent*, &c. as in the last form.

Attempt to murder, by attempting to drown, suffocate, &c.] Whosoever shall "attempt to drown, suffocate or strangle any person," with intent to murder, shall, although no bodily injury shall be effected, be guilty of felony, and be transported for life, or for not less than 15 years, or be imprisoned with or without hard labour for not more than three years. 1 *Vict. c.* 85, *s.* 3.

Commitment:—*On* ——, *at* ——, *feloniously did attempt to drown* [or *suffocate* or *strangle*] *one A. B., by then and there* [&c. stating how,] *with intent thereby then and there feloniously, wilfully, and of his malice aforethought, the said A. B. to kill and murder; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Attempt to do bodily injury, &c. by shooting, stabbing, &c.] "Whosoever unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut or wound any person,"—with intent to maim, disfigure, or disable such person, or to do him some other grievous bodily harm,—or with intent to resist or prevent the lawful apprehension or detainer of any person—shall be guilty of felony, and be transported for life, or for not less than 15 years, or be imprisoned, with or without hard labour, for not more than three years. 1 *Vict. c.* 85, *s.* 4. Where a pistol, loaded with powder and the wadding only, was fired at a woman, and so close to her and in such a direction, that it was capable of doing her grievous bodily harm, the court held it to be within the statute. *R.* v. *Wm. Kitchen*, *R.* & *Ry.* 95.

As to the attempt to shoot, and as to stabbing, cutting, and wounding, *see ante*, p. 146. A wound inflicted by biting, has been holden not to be within the statute, that being intended to apply only to a wounding by some instrument, and not to a wounding by the teeth or hands or the like. *R.* v. *Harris*, 7 *Car.* & *P.* 446. But where a man struck another with an air-gun on the hat, with great force, so that the hat inflicted a contused wound upon the head, the judges held this to be a wounding within the meaning of the statute. *R.* v. *Sheard*, 7 *Car.* & *Payne*, 846. It is generally understood, that to constitute a wounding, the skin must be broken; and in one case, three of the judges held that, supposing it to be so, a breaking of the cuticle, or outer skin, would not be sufficient; the inner as well as the outer skin must be broken. *R.* v. *M'Loughlin*, 8 *Car.* & *P.* 635. But where it appeared that the prisoner hit the prosecutor a blow with a hammer in the face, which had the effect of breaking the jaw in two places, and the skin was broken internally, but not externally: Lord Denman, C. J., and Park, J. held this to be a wounding within the meaning of the Act. *R.* v. *Leonard Smith*, 8 *Car.* & *P.* 173.

As to the intent, it may be inferred from the conduct or expressions of the party, before or at the time of his committing the act, or afterwards from the nature of the wound itself; but the latter is not in all cases to be depended upon as a test of the intent, for the wound may be slight, and yet the intent of the party inflicting it evidently such as is mentioned in the statute. *R.* v. *Hunt*, *Russ.* 93. Cutting a female child's private parts, for the purpose of enlarging them, has been holden to be a grievous bodily harm within the meaning of the statute, and to have been done with that intent, although the hymen was not injured, and the wound not deep or dangerous. *R.* v. *Cox*, *R.* & *Ry.* 362. Where the prisoner wounded the prosecutor, in an attempt to rob him, and was indicted on this Act, Coleridge, J. told the jury that if they thought that the wound was inflicted with intent to do the prosecutor some grievous bodily harm, in order to effectuate the purpose of robbing him, they should find him guilty; and he was found guilty accordingly. *R.* v. *Bowen*, 1 *Car.* & *M.* 149.

As to what apprehension is lawful, that subject has been already treated of, under the title "arrest," *ante*, p. 127, *and see R.* v. *Hems*, 7 *Car.* & *P.* 312. *R.* v. *Dyson*, 1 *Stark.* 246. *R.* v. *Ricketts*, 3 *Camp.* 68. *R.* v. *Taylor*, 7 *Car.* & *P.* 266. *R.* v. *Whalley*, *Id.* 245. Malice is also made an ingredient in this offence, by the words of the statute. But this must not be understood to mean a preconceived malice against the individual, which, if death had ensued, would have rendered the offence murder, but that kind of malice which may be inferred from the party's purposely committing the offence, with any one of the intents stated in the statute,

and not in the necessary defence of his person or property. *R.* v. *Griffiths*, 8 *Car.* & *P.* 248. *See Arch. Cr. Pl.* 30, 31. Also, if a man shoot at or cut A., imagining that he is doing so to B., and out of malice to B., he may be stated to have done so with intent to maim or disable A., and the facts will be considered as proving that statement. *R.* v. *Hunt, Ry.* & *M.* 93.

Commitment same as that for stabbing, shooting, &c., *ante*, p. 146, but stating the intent thus: *with intent thereby then and there* [*to maim the said A. B.* or *to disfigure*, or *disable*, or *to do some grievous bodily harm to the said A. B.*, or *to resist and prevent the lawful apprehension and detainer of him the said C. D.*, or *of one E. F.*, as the case may be;] *against the form of the statute in such case made and provided. And you the said keeper*, &c.

As to shooting at vessels or boats belonging to the navy or revenue, see *post*, *tit.* "*Smuggling.*"

Doing bodily injury, by explosive substances or corrosive liquids.] "Whosoever shall unlawfully and maliciously send or deliver to, or cause to be taken or received by any person, any explosive substance, or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person any corrosive fluid or other destructive matter, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, and whereby, in any of the cases aforesaid, any person shall be burnt, maimed, disfigured or disabled, or receive some other grievous bodily harm,"—shall be guilty of felony, and be transported for life, or not less than 15 years, or imprisoned, with or without hard labour, for not more than three years. 1 *Vict. c.* 85, *s.* 5. This offence of sending explosive substances to persons, for the purpose of doing them some bodily injury by the explosion, was holden not to be an attempt to discharge loaded arms, within the repealed clause of stat. 9 G. 4, c. 31, on that subject; *R.* v. *Mountford*, 7 *Car.* & *P.* 242; nor is it within the above clause of this statute, unless the party be actually burnt or otherwise injured by it; but it would evidently be indictable as a misdemeanor at common law, as an attempt to commit a felony. If sent to A. and it come into the hands of B., and injure him, it will be an offence within the Act; and it may be stated to have been sent to B., with intent to injure him. *See R.* v. *Hunt*, *supra.*

As to throwing corrosive fluids, &c.: the doing so, with intent to spoil or burn the clothes of any person, was formerly made felony by stat. 6 G. 1, c. 23, s. 11, (now repealed by

stat. 7 G. 4, c. 64, s. 32;) and on that statute it was holden, that if the act were done for the purpose of injuring the person and not the clothes of the party, it was not a case within the meaning of it. *R.* v. *Williams*, 1 *Leach*, 529. And as under this Act, the offence must be committed with intent to injure the person, not the clothes of the party, if a man, intending to spoil the clothes only, also in doing so injure the person of the party, it is probable that it would not be deemed an offence within this Act, unless it appear clearly that the necessary or very probable consequence of attempting thus to injure the clothes, would be attended with an injury to the person also. If, on the other hand, it appear clearly that the offender intended to injure the person, but succeeded only to the extent of injuring the clothes, it is probable that he might be indicted for it, as for an attempt to commit a felony, which is a misdemeanor at common law.

Commitment for sending explosive substances, &c.:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did send to one A. B.* [*two drachms weight of a certain explosive substance called* ——, here describe the thing sent,] *with intent thereby then and there to burn* [or as the case may be] *him the said A. B., and whereby the said A. B. was then and there grievously burnt; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Commitment for throwing corrosive fluids:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did cast and throw upon one A. B., half a pint of a certain corrosive fluid and destructive matter called oil of vitriol, with intent thereby then and there to burn* [or as the case may be] *him the said A. B., and whereby he the said A. B. was then and there grievously burnt; against the form of the statute in such case made and provided. And you the said keeper*, &c.

ATTEMPTS TO COMMIT OTHER OFFENCES.

All attempts to commit a felony, not specially provided for and made punishable by some particular statute, are punishable as misdemeanors at common law, whether committed with force or otherwise; *see R.* v. *Higgins*, 2 *East*, 5; and in like manner, every attempt to commit a misdemeanor, either at common law or created by statute, is itself a misdemeanor at common law. *R.* v. ——, *R.* & *Ry.* 107, *per Le Blanc, J. R.* v. *Butler*, 6 *Car.* & *P.* 368, *per Patteson, J. R.* v. *Wm. Roderick*, 7 *Car.* & *P.* 795, *cor. Parke, B. R.* v. *Ball*, 1 *Car.*

& *M.* 249. The punishment is by fine or imprisonment, or both; except as to assaults, with intent to commit a felony, which are punishable as stated, *ante*, p. 142.

Commitment:—*On* ——, *at* ——, *did unlawfully attempt and endeavour to* [&c. stating the felony or misdemeanor attempted,] *by then and there* [&c. stating the act done.] *And you the said keeper*, &c.

ATTORNEY.

In what cases permitted to act.

At sessions.] Attornies may in all cases act as such at sessions. But it is provided by stat. 6 & 7 Vict. c. 73, s. 2, that no person shall act as an attorney at the general or quarter sessions, or before any justice or justices, unless he be admitted in one of the courts at Westminster, and, by stat. 37 G. 3, c. 90, s. 30, unless he have obtained his annual certificate, in the same manner as is necessary to enable him to act as attorney in the courts at Westminster. *See* 1 *Arch. Pr.* 41, *n. Arch. Pr. Q. Sess.* 19.

Before justices out of sessions.] In all cases of summary conviction "persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined, by counsel or attorney." 6 & 7 *W.* 4, *c.* 114, *s.* 2.

But in all other cases before justices out of sessions, attornies are allowed to take part in the proceedings, as a matter of courtesy only; they cannot insist upon it as a right. Where a person is charged before magistrates with a felony or misdemeanor, and they inquire into the case for the purpose of committing him for trial or discharging him, the room in which they sit upon such an occasion is not in law an open court; and neither an attorney, nor any other of the public, has a right to be present, without the consent of the magistrates; *Cox* v. *Coleridge*, 1 *B.* & *C.* 37; or, if any attorney be permitted to be present, he has no right to take any part in the proceedings, if the magistrates object to it. *Id.* And the same, in cases of applications for warrants against persons not in custody. *R.* v. *Borron*, 3 *B.* & *Ald.* 43. But although this is the strict rule of law upon the subject, yet, in practice, magistrates not only allow attornies to be present, and to act for their clients, prosecutors, or defendants, but are in general

happy to have the attendance of respectable professional gentlemen in cases before them, who, from their business habits, and their knowledge of the law of evidence, may be able to simplify a case and render it intelligible, which in the hands of the parties themselves would appear complex and difficult.

Their Duties.

As to commitments.] When an attorney is engaged by a prosecutor, to procure the commitment for trial of a person charged with a felony or misdemeanor, the case requires as much management and attention as if he were actually preparing it for trial. As the depositions which may be taken before the magistrate will be laid before the judge, or chairman of the quarter sessions, before whom the offender will be tried, in precisely the manner in which they are taken, and whether they make for or against the prosecution, if they be incomplete, or raise any doubt in the case, it is often difficult entirely to erase from the judge's mind the impression the depositions may have made, although the case be made more complete by additional evidence at the trial. In cases of any importance, therefore, the attorney should first collect all the evidence he can procure upon the subject; he should then examine the witnesses himself, and take minutes of their evidence, letting each tell his own story, but occasionally putting such questions as may be necessary to explain any part of the evidence, or, generally, of eliciting the truth. He should then arrange his evidence, in the order in which it will be best to lay it before the magistrates; and in this some tact, and often a good deal of nicety, are requisite. If there be direct evidence of the defendant's having committed the offence, that fact should be first proved, and then the facts or circumstances, from which intent or guilty knowledge (if either form an ingredient in the offence) may be inferred, may follow. But if the fact of the defendant's guilt is to be made out by circumstantial evidence, the fact of the offence having been committed by some person should first be proved, and then the circumstances from which it is to be inferred that it was committed by the defendant; and in laying these latter circumstances before the magistrate or a jury, often much will depend even on the order in which they are detailed.

In attending before magistrates on behalf of a prisoner, the principal duty of an attorney is to watch and take notes of the evidence against his client, and to prevent him from saying any thing which may prejudice his case. If he be furnished with evidence, either that the offence charged was not in fact committed, or not committed by the defendant, or that the defendant was legally justified in what he did, it may then

become a question of prudence whether he will adduce the evidence then (supposing the magistrates allow him to do so), or reserve it for the trial. If he be sure that the magistrate, upon hearing the evidence, will dismiss the charge against his client, of course he will adduce it then; but if not, his going into any detail of the evidence then, or even mentioning the nature of it, or saying more than merely that he has a good defence generally, may possibly prejudice his client's case at the trial.

As to summary convictions.] What has now been stated, as to the care that should be taken in getting up and arranging the proofs of a case, is particularly applicable in cases of summary convictions before magistrates. In commitments, any defect in the evidence may in some measure be remedied at the trial; but in the case of summary convictions, if the evidence for the prosecution is incomplete, the defendant will be acquitted, the informer or prosecutor probably ordered to pay costs, and, as the decision is final, he is without remedy. As much care, therefore, should be taken in getting up a case for a summary conviction, as in getting up a case for trial at *nisi prius*.

As to proceedings under the poor-laws.] Before an application is made for an order of removal, great care should be taken to collect all the evidence that can be had as to the real place of settlement. The pauper should first be examined; and from his evidence a clue may be obtained to other witnesses and proofs. This should be particularly attended to; as a mistake in the place of settlement, or, indeed, in the nature of the settlement, may involve the parish in much fruitless litigation. In laying the case before the magistrates, therefore, it will be necessary to give such evidence (that of the pauper, for instance) as may be necessary to prove the intended settlement, and induce the magistrates to grant the order. Care must be taken, also, to state the particulars of the settlement in the examination, with the same degree of certainty, as is requisite in stating the grounds of appeal against an order; for any defect in this respect may be made the subject of an appeal. If afterwards, however, there should be an appeal against the order, the respondents will not be confined at the trial to the evidence contained in the examination before the magistrates, but will be allowed to prove the settlement there mentioned, by any other evidence they may think fit.

As to proceedings at sessions.] The duties of an attorney with respect to proceedings at the general quarter sessions, are so fully detailed in a work lately published by me on the practice of that court, that I shall only here refer to it; adding

merely, that upon the manner in which a case is got up for sessions, and particularly in appeals, depends very often the result.

As to breaches of trust by attornies, see *tit.* "*Agent*," *ante*, p. 14.

BAIL.

In what cases.] In treason, justices of the peace cannot admit the accused party to bail; *Stat. Westm.* 1, c. 15; they must refer him to the court of Queen's Bench, who alone have authority to do so.

In misdemeanors, except for breach of prison, any one or more justices may admit the party to bail; *see stat. Westm.* 1, c. 15; and it is usual to do so, the justice exercising his discretion merely as to the amount for which he will require bail. *See R.* v. *Badger et al.* 4 *Q. B.* 468.

In felonies, one justice of peace cannot admit the accused party to bail; this can only be done by two justices at the least. Where one justice alone is present, if the evidence against the accused be complete, or such as to raise a strong presumption of guilt, he must commit him; but if "the whole evidence given before him shall be such as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such justice shall order the person charged to be detained in custody until he or she shall be taken before two justices at the least." 7 *G.* 4, *c.* 64, *s.* 1. And formerly even two or more justices could admit the accused party to bail in felony, only in cases where the evidence against him was not such as to raise a strong presumption of guilt, or to require his committal, or where the evidence adduced in his behalf (which the justices might allow, if they thought it conducive to the ends of justice to do so) appeared in their opinion to weaken the presumption of guilt, but where notwithstanding there appeared to be sufficient ground for judicial investigation. *Id.* But now, by stat. 5 & 6 W. 4, c. 33, s. 3, reciting that in many cases the taking bail for the appearance of persons charged with felony, may be safely admitted, without endangering the appearance of such persons to take their trial in due course of law; and it is therefore expedient in such cases

to amend and extend the provisions of the above stat. 7 G. 4, c. 64,—it is enacted, "that it shall be lawful for any two justices of the peace, if they shall think fit, of whom one or other shall have signed the warrant of commitment, to admit any person or persons charged with felony, or against whom any warrant of commitment for felony is signed, to bail, in the manner and according to the provisions directed by the said recited act, in such sum or sums of money, and with such surety or sureties as they shall think fit, and notwithstanding such person or persons shall have confessed the matter laid to his or their charge, or notwithstanding such justices shall not think that such charge is groundless, or shall think that the circumstances are such as to raise a presumption of guilt." From the manner in which this section is worded, it might be imagined that it gave authority to admit to bail, only in cases where the accused party had already been committed. But the words "of whom one or other shall have signed the warrant of commitment," mean merely, that if the party have been committed, the committing magistrate must be one of those who afterwards admit him to bail; there is no doubt that if he be originally brought before two magistrates, they may bail him if they will, without first committing him.

Refusing to take bail, where by law it ought to be taken, is, it seems, a misdemeanor; 2 *Hawk. c.* 15, *s.* 13; and excessive bail ought not to be required. 1 *W.* & *M. sess.* 2, *c.* 2. Admitting a party to bail, who is not bailable, is also punishable; 2 *Hawk. c.* 15, *s.* 7; so, for taking insufficient bail, a justice may be fined by the justices of assize, if the party do not appear to take his trial according to the condition of his recognizance. *Id. s.* 6; *and see* 7 *G.* 4, *c.* 64, *ss.* 5, 6.

When the justices refuse to bail the accused party, he may apply to the Court of Queen's Bench; and the judges there, upon a consideration of the case as it appears from the depositions taken before the magistrates, and without reference to the invalidity or validity of the warrant of commitment, may, if they think fit, either award a *habeas corpus* to bring him into court to be bailed; *see R.* v. *Grieffenburgh*, 4 *Burr.* 2179. *R.* v. *Booth*, 2 *Ld. Ken.* 170. *R.* v. *Marks*, 3 *East*, 157. *R.* v. *Homer, Cald.* 295; or in cases where it appears that the party is poor, and unable to bear the expense of being brought to court, they will grant a rule to show cause why he should not be bailed by a magistrate in the country; *R.* v. *Jones*, 1 *B.* & *A.* 209. *R.* v. *Massey*, 6 *M.* & *S.* 108; in which latter case, the rule absolute will contain all the necessary directions for the taking of the bail.

Where.] When a party is brought before justices without warrant, he may be bailed by them. Where he is apprehended under a warrant, in the county or other jurisdiction in which

it was originally granted, the bail must be taken by justices of that county, &c.; or if the warrant be backed, and the party thereupon arrested in another county, he may be bailed before the justice who backed the warrant, and another justice of the same county, where necessary, or some other justices of the same county; 24 *G.* 2, *c.* 55, *s.* 1. 45 *G.* 3, *c.* 92, *s.* 1; or before justices of the county where the warrant was originally issued.

How.] Where application is made to a justice of peace to bail a party, he may, if he think fit, (and in suspicious cases it is usually done), order that a reasonable notice of the bail, usually twenty-four or forty-eight hours, according to circumstances, shall be given to the prosecutor. And when the bail appear, whether such notice have been given or not, the justice, or the prosecutor, or any professional person on his behalf (if permitted), may examine them on oath as to their sufficiency.

If either of them be not a housekeeper, or appear not to be worth the sum for which he comes to be bail, both may be rejected. But if they both appear to be responsible persons, and housekeepers, the justice then takes their and the prisoner's recognizance of bail; which is done, by first filling up one of the common printed forms of recognizance, and then stating to the prisoner and his bail the substance of it, stating it however in the second person, "*you acknowledge yourselves to owe to our sovereign lady the Queen,*" &c.

Before the party is admitted to bail, the justice or justices must take his examination, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing; and shall certify such bailment in writing; and "shall subscribe all such examinations, informations, bailments, and recognizances, and deliver or cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court." 7 *G.* 4, *c.* 64, *s.* 2. Where a warrant has been backed, and bail taken before the justice who backed it, the recognizance and examinations in that case, by stat. 24 G. 2, c. 55, s. 1, are to be given by the justice to the constable, and by him delivered to the clerk of assize or clerk of the peace; and it should seem that it was not intended by stat. 7 G. 4, c. 64, s. 2, to repeal this provision of stat. 24 G. 2.

Discharge of the party.] Upon the recognizance being taken, if the defendant have appeared voluntarily, or if he be in custody of the constable, the justice discharges him as a matter of course. But if he be in prison, the justice, upon application, may issue the following *Warrant of Deliverance:*—

Berkshire: E. F. Esquire, and G. H., clerk, two of Her Majesty's justices of the peace for the said county, to the keeper of Her said Majesty's gaol at ——, in the said county.

Forasmuch as C. D., late of ——, labourer, hath before us found sufficient sureties for his appearance before [*the justices at the next general quarter sessions of the peace* "or" *Her said Majesty's justices of gaol delivery, at the next general gaol delivery*] *to be holden in and for the said county, to answer to our said sovereign lady the Queen, for and concerning the* [here describe the offence shortly, as in the recognizance], *for the suspicion whereof he was taken and committed to your said gaol: We therefore hereby command you, on behalf of our said sovereign lady the Queen, that if the said C. D. do remain in your said gaol for the said cause, and for no other, you shall forbear to detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the pain that will thereon ensue. Given under our hands and seals, at ——, the —— day of ——, in the year of our Lord,* 18 —.

BAIL, PERSONATING.

See "Personating."

BANKS, DESTROYING.

See "Malicious Injuries."

BANK NOTES.

See "Forgery," "Larceny."

BANKER.

See "Agent."

BANKRUPT, FRAUDS BY.

Not surrendering.] If any person adjudged bankrupt after the commencement of this act (12 *Aug.* 1842) "shall not,—upon the day limited for the surrender of such bankrupt, and before three of the clock of such day,—or at the hour and upon the day allowed him for finishing his examination, after notice thereof in writing, to be left at the usual or last known place of abode or business of such person, or personal notice in case such person be then in prison, and notice given in the *London Gazette* of the issuing of the fiat and of the sittings of the court authorized to act in the prosecution of the fiat against him,—surrender himself to such court, and sign or subscribe such surrender, and submit to be examined before such court from time to time, upon oath,—with intent to defraud his creditors:" felony, transportation for life or not less than seven years, or imprisonment, with or without hard labour, for not more than seven years. 5 & 6 *Vict. c.* 122, *s.* 32. The words "with intent to defraud his creditors," are in the latter part of the section, after the statement of the other offences hereafter mentioned under this head; but this intent has been holden to override the whole of them. *R.* v. *Hill*, 1 *Car.* & *K.* 168. Where the bankrupt was in prison at the time, Littledale, J. held that his not surrendering was not a case within the statute. *R.* v. *Mitchell*, 4 *Car.* & *P.* 251. Where the bankrupt had surrendered and submitted to be examined, but afterwards refused to answer certain questions, a majority of the judges held, that as he had surrendered, and submitted to the jurisdiction of the commissioners, his refusing afterwards to answer particular questions was not a case within that statute. *R.* v. *Page*, *R.* & *Ry.* 392. *Sed qu.*

Commitment:—*For that he the said C. D. being a person against whom a fiat in bankruptcy had issued, and who had thereupon been adjudged bankrupt, whereof notice in writing was on* ——, *at* ——, *left at the usual* [or *last*] *place of abode* [or *business*] *of the said C. D., there, and notice given in the Gazette of the issuing of the said fiat and of the sittings of the court authorized to act in the prosecution of the said fiat against him, feloniously did not before three of the clock on* ——, (*being the day limited in that behalf for the surrender of the said bankrupt,*) *surrender himself to the said court* [&c. describing the offence,] *with intent thereby then and there to defraud his creditors; against the form of the statute in such case made and provided. And you the said keeper,*" &c.

Not discovering his estate, &c.] "Or if any such bankrupt, upon such examination, shall not discover all his real and personal estate, and how, and to whom, upon what consideration, and when, he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereunto, (except such part as shall have been really and bonâ fide before sold or disposed of in the way of his trade, or laid out in the ordinary expense of his family):" felony, &c. as above. 5 & 6 *Vict. c.* 122, *s.* 32.

Commitment:—*For that he the said C. D., being a person against whom a flat in bankruptcy had issued, and who had thereupon been adjudged bankrupt† upon being examined before the court authorized to act in the prosecution of the said flat against him,* on ——, at ——, feloniously did not discover certain* [*personal estate, to wit, a certain bill of exchange for* 100*l. purporting to be drawn by I. K. upon and accepted by L. M., of which he the said C. D. was then and there possessed,* &c. describing the offence,] *the same not having been really and bonâ fide before then* [*sold or*] *disposed of in the way of his trade, or laid out in the ordinary expense of his family; with intent thereby then and there to defraud his creditors: against the form of the statute in such case made and provided. And you the said keeper,* &c.

Not delivering up his goods, books, &c.] "Or if any such bankrupt shall not, upon such examination, deliver up to the said court all such part of such estate, and all books, papers, and writings, relating thereunto, as shall be in his possession, custody, or power, (except the necessary wearing-apparel of himself, his wife, and children):" felony, &c. as *ante*, p. 158. 5 & 6 *Vict. c.* 122, *s.* 32.

Commitment, same as the last form, to the asterisk,* and then thus: *on ——, at ——, feloniously did not deliver up to the said court, certain personal property, to wit, one gold watch of the value of* 20*l. which was then and there in the possession, custody and power of the said C. D., and not being any part of the necessary wearing-apparel of the said C. D., or of his wife or children; with intent thereby then and there to defraud his creditors: against the form of the statute in such case made and provided. And you the said keeper,* &c.

Concealing or embezzling to the value of 10*l.*] "Or if any such bankrupt shall remove, conceal, or embezzle any part of such estate, to the value of 10*l.* or upwards, or any books of account, papers, or writings relating thereto, with intent to defraud his creditors:" felony, &c. as *ante*, p. 158. 5 & 6 *Vict. c.* 122, *s.* 32.

Commitment, same as the form, *supra*, to the mark †, and then thus: *on* ——, *at* ——, *feloniously did remove, conceal, and embezzle a certain part of his personal estate, to the value of* 10*l. and upwards, to wit, one gold watch of the value of* 20*l., with intent thereby then and there to defraud the creditors of him the said C. D. of the same; against the form of the statute in such case made and provided. And you the said keeper*, &c. If the commitment be for removing or concealing merely, it seems that it should show that the bankrupt had passed his last examination. *See R.* v. *Walters*, 5 *Car.* & *P.* 138.

See also stat. 5 & 6 *Vict. c.* 122, *ss.* 34, 35.

BARON AND FEME.

See "*Husband and Wife.*"

BARRATRY.

A barrator is said to be a common mover, exciter, or maintainer of suits or quarrels, either in courts or in the country. 1 *Hawk. c.* 81, *s.* 1. The offence is punishable with fine, imprisonment, or both. By stat. 12 G. 1, c. 29, if any person, convicted of common barratry, shall afterwards practise as an attorney, he is liable to be transported for seven years.

BASTARD.

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1. *Bastard, who, and Proof thereof.*

Who.] A bastard is a person begotten and born out of lawful matrimony. The child of a woman who has never been married is a bastard. The child of a woman, whose marriage is unlawful and void, is a bastard; as for instance, where the person, to whom she was married, had at the same time another wife living: in such case the children of the second marriage are bastards, whether born during the lifetime, or after the death of the first wife. A child born of a widow at such a time after her husband's death that the husband could not have been the father of it, is a bastard; but if born within the time of gestation, namely 40 weeks, after the husband's death, it is otherwise.

On the other hand, if the woman be married at the time the child is born, the child will be deemed legitimate, although it were begotten before marriage, and although there be every reason to believe that the husband was not the father of it; *Co. Litt.* 244; and *à fortiori*, where the woman was married during the whole time of gestation. In this latter case, however, if it can be proved that the husband could not have been the father of it, as for instance, that he had not access to his wife during the time when by the laws of nature he might have been the father, the child will be deemed a bastard. *See Head* v. *Head*, 1 *Sim.* & *St.* 150, 1 *Turn.* & *Rus.* 138. *R.* v.

Luffe, 8 *East*, 193. *Pendrel* v. *Pendrel*, 2 *Str.* 925. *R.* v. *St. Bride's*, 1 *Str.* 51. *R.* v. *Bedall*, 2 *Str.* 1076. But access will be presumed, unless the contrary be plainly proved: and if access be proved or presumed, sexual connexion between the parties will also be presumed, unless the impossibility of it, by reason of the impotency of the husband or otherwise, be clearly established. *See Cope* v. *Cope*, 1 *Moody* & *R.* 269. *Lomax* v. *Holmden*, 2 *Str.* 946. Where sexual intercourse between the husband and wife may be presumed, proof of her adultery with other men will not affect the legitimacy of the offspring. *See Morris* v. *Davies*, 3 *Car.* & *P.* 215, 427. *Bury* v. *Philpot*, 2 *Mylne* & *K.* 349.

If a woman, who is divorced from her husband *à mensâ et thoro*, have a child, it must be presumed to be a bastard; for the court will presume a due obedience to the sentence of the court, until the contrary be proved. *St. George's* v. *St. Margaret's, Westminster*, 1 *Salk.* 123. But if she live separate from her husband without such sentence, access shall be presumed, and her children deemed legitimate, until the contrary be proved. *Id.*

Proof thereof.] If the mother be unmarried, she may prove her child to be a bastard, by proving that she was unmarried at the time of its birth, and during the whole time of gestation; if a widow, she may prove it, by proving the time of its birth, and the time of the death of her husband. If the mother be reputed to be a married woman, the marriage may be disproved, or facts showing its invalidity may be proved, either by her, *R.* v. *Bramley*, 6 *T. R.* 330, or by the man to whom she was reputed to be married. *R.* v. *St. Peter's in Worcestershire*, *Burr. S. C.* 25. Or if she be married, she may prove her connexion with the putative father; *R.* v. *Luffe*, 8 *East*, 193; but she shall not be permitted to prove the non-access of her husband, *Id.* *R.* v. *Rook*, 1 *Wils.* 340, either directly or circumstantially, even after the husband's death. *R.* v. *Kea*, 11 *East*, 132. Where the pauper, the daughter of a married woman, was born at Sourton, and the mother's husband had since acquired a settlement at Clifton, the question at the trial of the appeal was, whether the pauper were legitimate, so as to be entitled to the settlement at Clifton; the husband was examined as a witness, and upon his cross-examination stated that for a year previous to the birth of the child, and continually afterwards, he resided at Clifton, where he cohabited with his wife's sister, and had a family by her, Clifton being 100 miles distant from Sourton, where the wife resided; and from this cross-examination the sessions were of opinion that there had not been access: but the court held, that neither husband nor wife can give evidence of non-access, nor can they be examined or cross-examined to collateral facts for the pur-

pose of proving it: and they accordingly quashed the order of sessions. *R.* v. *Sourton*, 5 *Ad.* & *El.* 180. And where a married woman proved that her husband and she had lived separate many years, that she had married another man, after which she had two children (the paupers,) and that her first husband cohabited with another woman; the court held that all this did not amount to evidence of non-access, and the paupers must therefore be deemed to be the legitimate children of the first husband. *R.* v. *Mansfield*, 1 *Q. B.* 444. Either husband or wife, however, may prove that the child was born before marriage; *Goodright* v. *Moss*, *Cowp.* 591; but their declarations to that effect, even after their death, though receivable in questions of pedigree, *Id.*, are no evidence whatever in settlement cases. *R.* v. *Erith*, 8 *East*, 539.

2. *Settlement of Bastards.*

A bastard born before the 14 August, 1834, is settled in the parish or township in which it was born; *R.* v. *Spitalfields*, 1 *Ld. Raym.* 567. *R.* v. *Astley*, 2 *Bott*, 10; unless it were born of a mother who was at the time actually confined within the walls of a prison, or in a house duly licensed for the reception of pregnant women. 54 *G.* 3, *c.* 170, *s.* 2. And if born in an extraparochial place, it had no place of settlement, either by birth or parentage. *R.* v. *St. Nicholas, Leicester*, 2 *B.* & *C.* 889. *R.* v. *Mattersey*, 4 *B.* & *Ad.* 211, *and see R.* v. *Wilson*, 2 *Ad.* & *El.* 230. Even where a pauper was born at Oakmere, at a time when it was extraparochial and no overseer appointed; afterwards it was made a township by act of parliament, and overseers appointed for it; and the pauper becoming chargeable was removed to it: the court held that he could not be removed to it as the place of his settlement, for it was no township at the time of his birth, and the statute had not the effect of conferring any settlement upon him. *R.* v. *Oakmere*, 5 *B.* & *A.* 577. But if the bastard were born in a house of industry or poor house of an incorporated district, or which was locally situate out of the parish, &c. by which the mother was sent, then the child was deemed to be settled in the parish, &c. by which the mother was sent, or on whose account the mother was received or maintained in the house. 54 *G.* 3, *c.* 170, *s.* 3. So, if an order for the removal of an unmarried woman, pregnant, were suspended, and during the suspension she was delivered of a bastard, the child would be settled, not in the parish where it was born, but in the parish in which the mother was settled at the time of her delivery. 35 *G.* 3, *c.* 101, *s.* 6. So, if a woman, pregnant of a bastard, were, by the fraud or collusion of the parish officers, (and not merely of the putative father or the like, *R.* v. *Mattersey*, 4 *B.* & *Ad.* 211, *and see R.* v. *Wilson*, 2 *Ad.*

& *E.* 230,) sent from one parish to be delivered in another, and she were delivered in the latter parish accordingly, the child would be deemed to be settled in the parish from which the mother was sent. *Tewkesbury* v. *Twining*, 2 *Bulst.* 349. *Masters* v. *Child*, 3 *Salk.* 66. So, if, after a regular order obtained for the removal of a woman, pregnant of a bastard, the child were born before the mother could be removed; *R.* v. *Icleford*, 1 *Sess. Ca.* 32; or whilst the mother was removing: *Jane Grey's Case*, *Set.* & *Rem.* 66: the child would be settled in the parish to which the mother was about to be removed. Or if the mother were actually removed, but the removal were wrongful, and the order were afterwards quashed upon appeal, her child, born in the parish to which she was removed, either before or pending the appeal, would be deemed to be settled in the parish by which she was removed, *Westbury* v. *Coston*, 2 *Salk.* 532. *Boreham* v. *Waltham*, *Carth.* 397. *Much Waltham* v. *Peram*, 2 *Salk.* 474, even although that were not in fact the place of the mother's settlement. *R.* v. *Great Salkeld*, 6 *M.* & *S.* 408. *R.* v. *Martlesham*, 10 *B.* & *C.* 77. *R.* v. *St. Andrew, Holborn*, 6 *M.* & *S.* 411. If, however, after removal, the mother were secretly to return to the removing parish, and there be delivered of the bastard, the child would be settled where born. *R.* v. *Halifax*, 2 *B.* & *Ad.* 211.

As to bastards born after the 14th August, 1834, it is enacted by stat. 4 & 5 W. 4, c. 76, s. 71, that every such bastard "shall have and follow the settlement of the mother of such child, until such child shall attain the age of 16 years, or shall acquire a settlement in its own right." This enactment may in some years hence give rise to a question, whether the mother's settlement at the time the child attains the age of 16 years, shall be his settlement afterwards until he acquire one in his own right, or whether he shall have and follow the settlement of his mother only until he is 16 years of age, and then revert to his birth settlement. It has been decided that if the mother marry before that time, the child acquires the settlement of the mother's husband. *R.* v. *St. Mary, Newington*, 12 *Law J.* 68, *m.* 4 *Q. B.* 581.

3. *Who is liable to maintain it.*

As to bastards born since the 14th August, 1834, it is enacted by stat. 4 & 5 W. 4, c. 76, s. 71, that the "mother, so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family, until such child shall attain the age of 16; and all relief granted to such child, while under the age of 16, shall be considered as granted to such mother: provided always that such liability of such mother as aforesaid, shall cease on the marriage of such child,

if a female." The mother however may apply for and obtain an order of filiation against the putative father, as shall be noticed presently, and thereby compel him to contribute to its maintenance.

As to bastards born before the 14th August, 1834, there is no statutable provision for their maintenance, so long as the mother remains unmarried, except such orders of filiation made before that time, under the old statutes, 18 El. c. 3, s. 2, and 49 G. 3, c. 68, s. 3, which may happen still to be in force; and these will cease to be in force on the 1st January, 1849. 7 & 8 *Vict. c.* 101, *s.* 9.

But if the mother marry, the husband shall be liable to maintain any child or children she may have at the time of her marriage, whether legitimate or illegitimate, as a part of his family, and shall be chargeable with all relief or the cost price thereof, granted to or on account of such child or children, until the child or children attain the age of 16, or the mother die. 4 & 5 *W.* 4, *c.* 76, *s.* 57. And where an order of filiation was made upon the putative father of a bastard child, before this statute, and the mother afterwards married a man who was able to maintain it, the court of Exchequer held that the marriage of the mother relieved the putative father from his liability; and Parke, B. intimated an opinion that the affirmative words of the section amounted to a repeal of the former statutes relating to bastardy, and destroyed altogether the effect of the order of filiation, during the marriage of the mother. *Lang* v. *Spicer*, 1 *Mees.* & *W.* 129. *But see stat.* 7 & 8 *Vict.* c. 101, *s.* 9, *supra.*

4. ORDER OF FILIATION.

1. *Statutes upon the subject.*

Formerly, by stat. 18 Eliz. c. 3, when a bastard was born in a parish, two justices might "take order, as well for the punishment of the mother and reputed father, as also for the better relief of such parish, in part or in all;" and also might "take order for the keeping of every such bastard child, by charging such mother or reputed father with the payment of money weekly, or other sustentation, for the relief of such child," in such ways as they should think fit or convenient. In pursuance of this statute, two justices, upon complaint of the churchwardens and overseers of the poor of the parish, summoned the putative father; and if it were proved that he was the father of the child, they made an order upon him for

such sum as the overseers had already expended for the delivery of the mother and maintenance of the child, and for a certain weekly sum for the maintenance of the child, as long as it should be chargeable; sometimes also they made an order on the mother, for payment of a weekly sum, for the same purpose. By stat. 7 Jac. 1, c. 3, also, the woman might be committed for one month to the house of correction, there to be imprisoned and kept to hard labour. By stat. 6 G. 2, c. 31, the woman might be examined on oath before two justices whilst she was yet pregnant, as to the person by whom she was pregnant, and upon that being disclosed, the justices might issue a warrant to apprehend him, and bring him before them, to find sureties either to indemnify the parish, or for his appearance at the sessions to abide the order of that court; and if he refused to find sureties, he was committed to the house of correction; but if no order of filiation were made within six weeks after the woman was delivered, then he was discharged.

These statutes however were repealed by stat. 4 & 5 W. 4, c. 76, by which it was enacted that thereafter, if a bastard child, by reason of the inability of its mother to provide for its maintenance, should become chargeable to a parish or township, the overseers, on giving notice to the putative father, might apply to the court of quarter sessions for an order on the putative father for payment of any sum they might then have expended, and a weekly sum afterwards, for the maintenance of the child, until it should attain the age of seven years. Some alteration was afterwards made in this mode of proceeding by stat. 2 & 3 Vict. c. 85, namely, that if the parish were in an union or under guardians, the application for the order should be by the guardians and not by the overseers, and that the application was to be to the petty sessions, unless the putative father should elect to have the matter heard and decided by the sessions.

But now, by stat. 7 & 8 Vict. c. 101, s. 1, after reciting the above provisions of stat. 4 & 5 W. 4, c. 76, it is enacted that after the passing of that Act (9 August, 1844) all powers for obtaining or making an order upon any putative father, for the maintenance of a bastard child, shall cease and determine, "except as hereinafter provided." The Act then proceeds to make the following provisions upon the subject.

"Any single woman who may be with child, or who may be delivered of a bastard child, after the passing of this Act, or who has been delivered of a bastard child within the period of six calendar months before the passing of this Act, may, either before the birth, or at any time within twelve months from the birth of such child, or at any time thereafter, upon proof that the man alleged to be the father of such child has within the twelve months next after the birth of such child

paid money for its maintenance, make application to any one justice of the peace acting for the petty sessional division of the county, or for the city, borough, or place, in which she may reside, for a summons to be served on the man alleged by her to be the father of such child; and if such application be made before the birth of the child, the woman shall make a deposition upon oath stating who is the father of such child, and such justice of the peace shall thereupon issue his summons to the person, alleged to be the father of such child, to appear at a petty session to be holden after the expiration of six days at least for the petty sessional division, city, borough, or other place in which such justice usually acts." 7 & 8 *Vict.* c. 101, s. 2.

"After the birth of such bastard child, on the appearance of the person so summoned, or on proof that the summons was duly served on such person, or left at his last place of abode six days at least before the petty session, the justices in such petty session shall hear the evidence of such woman, and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father; and if the evidence of the mother be corroborated in some material particular by other testimony to the satisfaction of the said justices, they may adjudge the man to be the putative father of such bastard child; and they may also, if they see fit, having regard to all the circumstances of the case, proceed to make an order on the putative father for the payment to the mother of the bastard child, or to any person who may be appointed to have the custody of such child under the provisions of this Act, of a sum of money weekly, and of such costs as may have been incurred in the obtaining of such order, including, if they think proper, ten shillings for the midwife, and ten shillings towards the funeral expenses of the child, provided it have died before the making of such order: and if the application be made before the birth of the child, or within two calendar months after the birth of the child, such weekly sum may, if the said justices think fit, be calculated from the birth of the child, at a rate not exceeding five shillings per week for the first six weeks after the birth of such child; and in other cases such sum shall not exceed two shillings and sixpence per week from the time of the making of the application: and if at any time after the expiration of one calendar month from the making of such order as aforesaid it be made to appear to any one justice, upon oath or affirmation, that any sum to be paid in pursuance of such order has not been paid, such justice may, by warrant under his hand and seal, cause such putative father to be brought before any two justices; and in case such putative father neglect or refuse to make payment of the sums due from him under such order, or since any commitment for disobedience

to such order as hereinafter provided, together with the costs attending such warrant, apprehension, and bringing up of such putative father, such two justices may, by warrant under their hands and seals, direct the sum so appearing to be due, together with such costs, to be recovered by distress and sale of the goods and chattels of such putative father, and may order such putative father to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless he give sufficient security, by way of recognizance or otherwise, to the satisfaction of such justices, for his appearance before two justices on the day which may be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security; but if upon the return of such warrant, or if by the admission of such putative father it appear that no sufficient distress can be had, then any such two justices may, if they see fit, by warrant under their hands and seals, cause such putative father to be committed to the common gaol or house of correction of the county, city, borough, or place where they have jurisdiction, there to remain without bail or mainprize for any term not exceeding three calendar months, unless such sum and costs, and all reasonable charges attending the said distress, together with the costs and charges attending the commitment and conveying to gaol or to the house of correction, and of the persons employed to convey him thither, be sooner paid and satisfied: Provided always, that if the woman have allowed the weekly payment to be in arrear for more than thirteen successive weeks, without application to a justice, the man shall not be called upon to pay more than the amount due for thirteen weeks in discharge of the whole debt, and no warrant of distress shall be issued for more than the amount of arrears for thirteen weeks payment in discharge of the whole arrears of debt." *Id. s.* 3.

"The justices in petty session as aforesaid may adjourn the hearing of the case as often as to them may seem fit; but no such order shall be made, unless applied for at such petty sessions within the space of forty days from the service of the summons after the birth of the bastard child on the person alleged to be the father of such bastard child: and if within twenty-four hours after the adjudication and making of any order on the putative father as aforesaid, such putative father give notice of appeal to the mother of the bastard child, and also within seven days give sufficient security, by recognizance or otherwise, for the payment of costs, to the satisfaction of some one justice of the peace, it shall be lawful for such putative father to appeal to the general quarter sessions of the peace to be holden after the period of fourteen days next after the making of the said order for the county, city, borough, or place for which such petty session may have been held; and

the justices in such quarter sessions assembled, or the recorder, as the case may be, shall thereupon hear and determine such appeal, and shall order such costs to be paid by either party as to them or him may seem fit." *Id. s.* 4.

"All money payable under any order as aforesaid shall be due and payable to the mother of the bastard child, in respect of such time and so long as she lives and is of sound mind, and is not in any gaol or prison, or under sentence of transportation; and after the death of the mother of such bastard child, or whilst such mother is of unsound mind, or confined in any gaol or prison, or under sentence of transportation, any two justices may, if they see fit, by order under their hands and seals, from time to time appoint some person, who, with his own consent, shall have the custody of such bastard child, so long as such bastard child is not chargeable to any parish or union, and any two such justices may revoke the appointment of such person, and may appoint another person in his stead; and every person so appointed to have the custody of a bastard child shall, so long as such child is not chargeable to any parish or union, be empowered to make application for the recovering of all payments becoming due under the order of the court of petty session as aforesaid, in the same manner as the mother of such bastard child might have done; and the clerk to the justices making any order on the putative father of a bastard child, or appointing any person to have the custody of such child as herein-before provided, shall as soon as may be send by post or otherwise a duplicate of such order or appointment, signed by such clerk, to the clerk to the guardians of the union or parish in which the mother of such bastard child resided at the time of making such order or appointment: provided always, that no order for the maintenance or support of any such bastard child made in pursuance of this Act shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of thirteen years, or after the marriage of the mother of such child, or after the death of such child." *Id. s.* 5.

"Every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby such child becomes chargeable to any parish or union, shall be punishable as an idle and disorderly person, under the provisions of an Act made and passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of the united kingdom called England;" and every woman so neglecting to maintain her bastard child, after having been once before convicted of such offence, and every woman deserting her bastard child, whereby such bas-

tard child becomes chargeable to any parish or union, shall be punishable as a rogue and vagabond, under the provisions of the said last-recited act." *Id. s.* 6.

"It shall not be lawful for any justice of the peace to appoint any officer of any parish or union to have the custody of any bastard child as herein-before provided, or for any officer of any parish or union, clerk of justices, or constable, to receive any money in respect of any bastard child under an order of petty session as aforesaid, or as such officer to conduct any application to make or enforce such order, or in any way to interfere as such officer in causing such application to be made, or in procuring evidence in support of such application, under a penalty of forty shillings, to be levied on conviction before any two justices as penalties and forfeitures under the said first-recited Act: provided always, that after the death of such mother, or if such mother be incapacitated as aforesaid, so often as any bastard child for whose maintenance such order of petty sessions has been made, becomes chargeable to any parish or union by the neglect of the putative father to make the payments due under the orders of justices, then and in such case it shall be lawful for any board of guardians of an union or parish, or, if there be no such board of guardians, for the overseers of any parish or place, to make such application for the enforcement of the order as might have been made by the mother of such bastard child if alive; but all payments for the maintenance of such child made in pursuance of such application shall be made to some person to be from time to time appointed by the justices as herein-before provided, and on condition that such bastard child shall cease to be chargeable to such parish or union." *Id. s.* 7.

"If any officer of a union, parish, or place, endeavour to induce any person to contract a marriage by threat or promise respecting any application to be made or any order to be enforced with respect to the maintenance of any bastard child, such officer shall be guilty of a misdemeanor; and every person having the custody of any bastard child under any order of justices, as herein-before provided, who may misapply monies paid by the putative father for the support of such child, or may withhold proper nourishment from such child, or otherwise abuse and maltreat such child, shall, on conviction before any two justices, forfeit and pay a sum not exceeding ten pounds." *Id. s.* 8.

"But nothing in this act contained shall affect the validity of any orders for the maintenance of a bastard child made by justices in quarter or petty sessions before the passing of this Act; but no such order made before the fourteenth day of August one thousand eight hundred and thirty-four, shall be in force after the first day of January one thousand eight

hundred and forty-nine, and that all proceedings actually pending before justices in quarter sessions or petty sessions at the time of the passing of this act may be continued, and orders made therein in the same manner as if this Act had not been passed." *Id. s.* 9.

"And whereas various unions established under the authority of the said recited Act are situate partly in one county, riding, or division, and partly in an adjoining county, riding, or division; and whereas doubts have been entertained whether any justice of the peace acting under two commissions for different counties, ridings, or divisions, can legally make orders in bastardy when acting in petty sessions within the limits of one of such commissions, for such parts of such unions as are situate within the limits of the other of such commissions; and whereas it is expedient to remove all such doubts with regard to orders which have before the passing of this Act been made under such circumstances: be it therefore enacted, that all orders in bastardy which have been made by any justices of the peace acting as such under two commissions for any two adjoining counties, ridings, or divisions, shall, although not made within the county, riding, or division in which the parish interested in the order, or any part thereof, is situate, be as valid, good, and effectual in the law, to all intents and purposes, as if they had been made within such county, riding, or division." *Id. s.* 10.

"Every clerk to the justices shall once in each year (that is to say), as soon as may be after the first day of January, make up, in the form in the schedule (A) annexed to this Act, and forward to the clerk of the peace, a complete list of summonses issued, applications heard, and orders made as aforesaid since the first day of January of the year preceding, by the justices to whom he acts as clerk; and every clerk of the peace shall receive such lists, and shall, on demand of the clerk to the justices, acknowledge under his hand the receipt of any such list, and shall preserve the said lists, and shall, as soon as may be after the receipt of such lists, transmit copies thereof, duly certified, to Her Majesty's principal secretary of state for the home department, and shall also transmit a list of all the cases in which appeals have been made to the court of quarter sessions during the same period, with the result of every such appeal; and it shall be lawful for the justices of the peace, at their respective general quarter sessions of the peace, to make and settle a fee or fees to be paid to every such clerk to the justices for every such list; and on production by any such clerk to the justices of the acknowledgment by the clerk of the peace of the receipt of such list, the treasurer of the county shall pay the fee so made and settled, and due in respect of any such list, out of the county stock in the hands of such treasurer." *Id. s.* 11.

And by a subsequent statute, 8 & 9 Vict. c. 10, after reciting that divers questions have been raised as to the validity of certain orders in bastardy made by justices under stat. 7 & 8 Vict. c. 101, which questions are wholly beside the merits of the cases; and it is desirable to remove such questions, and to prevent the recurrence of the same or similar questions in future: it is enacted, that where any proceedings have been had or taken before the passing of this Act, or shall hereafter be had or taken, in matters of bastardy, under the provisions of the said recited act, and shall have been set forth according to the forms in the schedule hereunto annexed, or to the like tenor or effect, the same shall be taken respectively to have been and to be valid and sufficient in law; provided that nothing herein contained shall prevent any court of general quarter sessions from proceeding to hear and determine the merits of any case brought before them on appeal against any such order, or apply to any order heretofore made or professed to have been made under the said Act which shall have been quashed on appeal to any general quarter session of the peace, or in respect whereof any writ of certiorari shall have been sued out of the court of Queen's Bench, and served before the twenty-sixth day of February last, or in place whereof any other order shall have been made." *Id. s.* 1.

"And when any order made under the provision of the said Act prior to the passing of this Act, shall have been or shall be quashed for any defect therein, and not upon the merits, it shall be lawful for the mother of the bastard child, in whose favour such order shall have been made, to take proceedings for the obtaining of another order, according to the provisions of the said Act, at any time within the space of six calendar months after the passing of this Act, although the period limited for her application to the justice under the said Act shall have expired." *Id. s.* 2.

"And whereas power is given by the said Act to the putative father to appeal against an order made upon him by the justices in petty session assembled, giving notice of appeal as therein specified, and also sufficient security, by recognizance or otherwise, for the payment of costs, to the satisfaction of some one justice of the peace: it is enacted, that the condition of any such recognizance shall be for the appearance of the said putative father at such general quarter session of the peace as is required by the said Act, and his trial of the appeal thereat, and the payment of such costs as he shall be then and there ordered to pay; and that in respect of any order to be made after the passing of this Act, the party entering into any such recognizance, shall forthwith give or send a notice in writing of his having so entered into such recognizance to the woman in whose favour the said order shall have been made, and, (unless he shall enter into the recognizance before one of the

justices who shall have made the order), to one at least of such justices; and in default of his giving or sending such notice or notices as aforesaid the appeal shall not be allowed; provided that the sending of such notice or notices by the post shall be taken to be sufficient." *Id. s.* 3.

"And whereas it is enacted by the said Act, that any single woman who may be with child may apply to a justice of the peace as therein described for a summons to be served upon the man alleged by her to be the father of such child, and that such justice thereupon issue his summons to such man to appear at a petty session, as therein also set forth, and power is given to such woman after the birth of the child to apply to the justices at such petty session for an order upon the person so alleged by her to be the father of such child; but doubts are entertained as to the time which shall be fixed by such justice for the appearance of the said man so summoned at petty session, and it is desirable to remove the same: Be it therefore enacted, that the said justice to whom any application shall be made by any such woman being pregnant, shall summon the man to appear at some petty session at which he usually acts, to be held on a day after the time when the said mother shall expect the child to be born, provided that if on such day the woman shall not have been delivered, or the justices shall be satisfied that she has been delivered at so short a period before such day that she cannot appear at the said session, it shall be lawful for the justices thereat to adjourn the hearing of the said case until some other day, and so from time to time until the child shall have been born, and the woman shall be able to attend at the said session; and it shall be lawful for the justices at their petty session to make an order in respect of any such application so made by such woman so pregnant to a justice as aforesaid, if she apply at such petty session within the space of two calendar months from the birth of the child, although more than forty days shall have elapsed from the time when the summons was served upon the alleged father, or was left at his last place of abode." *Id. s.* 4.

"If at any time before the hearing of the appeal, the putative father, who shall have entered into any such recognizance, shall give notice in writing of his abandonment of the appeal, to the mother of the child in whose favour the order shall have been made, and to the justice or justices before whom the said recognizance shall have been taken, and shall pay or tender to the said mother all sums then due under the said order, and such costs and expenses as she shall have incurred by reason of such notice of appeal, the said recognizance so entered into by the said putative father shall not be estreated, nor in any manner put in force or otherwise proceeded with." *Id. s.* 5.

"And whereas by the said recited Act it is enacted, that where any woman shall apply to the justices at a petty session

for an order upon the person whom she shall allege to be the father of her bastard child, such justices shall hear the evidence of such woman, and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father; and if the evidence of the said mother be corroborated in some material particular by other testimony, to the satisfaction of the said justices, they may make such order as is therein set forth: and whereas power is thereby given to the putative father to appeal to the general quarter sessions of the peace against such order, but it is not therein set forth what evidence the said general quarter sessions shall or may hear on the trial of such appeal, and doubts have been raised as to whether the said mother can be heard by the said court of quarter sessions: be it therefore enacted, that on the trial of any such appeal before any court of quarter sessions, the justices therein assembled, or the recorder (as the case may be), shall hear the evidence of the said mother, and such other evidence as she may produce, and any evidence tendered on behalf of the appellant, and proceed to hear and determine the said appeal in other respects according to law, but shall not confirm the order so appealed against unless the evidence of the said mother shall have been corroborated in some material particular by other testimony, to the satisfaction of the said justices in quarter session assembled, or the said recorder." *Id. s.* 6.

"It shall be lawful for any woman who shall apply to the justices at any petty session for any such order as aforesaid to be assisted in her application by counsel or attorney, and for any person summoned under the said Act to appear at any such petty session as the alleged putative father to appear and make his answer thereto by counsel or attorney; and it shall be lawful for either of such parties to have all witnesses examined and cross-examined by such counsel or attorney." *Id. s.* 7.

"And whereas it is provided in the said first-recited Act, that if default be made by the putative father in payment of the sums ordered to be paid to the mother of a bastard child, any justice may by warrant cause such putative father to be brought before any two justices; and it is further provided, that such two justices may by warrant direct the sum appearing to be due under any such order, and the costs, to be recovered by distress and sale of the goods and chattels of such putative father; and if upon the return of such warrant, or if, by the admission of such putative father, it appears that no sufficient distress can be had, then any two such justices may cause such putative father to be committed to prison: and whereas doubts have been entertained whether such power of committal exists where it is shown that the putative father has goods and chattels whereon a distress might be levied, but the same are not within the jurisdiction of such justices: be it therefore declared

and enacted, that the said justices are and shall be empowered to commit any such putative father to prison, according to the provisions of the said Act, if it appear on the return of such distress warrant, or on the admission of the putative father, that no sufficient distress can be had on any goods and chattels within the jurisdiction of the justices before whom he shall have been brought on such warrant of apprehension." *Id. s.* 8.

"Any one magistrate of the police courts of the metropolis, sitting at a police court within the metropolitan police district, has and shall have full power to issue summonses for the appearance of parties and witnesses before such police court, and to do alone any other thing in any matter of bastardy arising under the said Act, within those parts of the said district for which a police court has been or shall be established, which may be done by any justices at a petty session holden for their several petty sessional divisions in any such matter arising within their divisions respectively, and that the sitting of such magistrate at such police court shall be within all the provisions of the said act and of this act concerning a petty session of justices." *Id. s.* 9.

"The term 'petty sessional division' in the said Act and this Act shall be taken to include any division of a county, riding, or division, having a separate commission of the peace, in which one or more petty sessions have been or shall be usually held, or any division for the holding of special sessions formed or to be formed under the provisions of the Act of the ninth year of the reign of His late Majesty King *George* the Fourth, intituled *An Act for the better regulation of divisions in the several counties of* England *and* Wales, or of the Act of the sixth year of the reign of His late Majesty amending the same; and that where there are two or more petty sessions usually held in any such division, or where any justice acts for two or more of such divisions, he shall require the party whom he shall summon under the authority of the said first-recited Act to appear at the petty session to be held in any such division as he shall deem fit." *Id. s.* 10.

"In the said first-recited Act and in this Act the word 'recorder' shall be taken to apply to any person who shall preside as the judge at any court of general or quarter session held for any city, borough, liberty, or other place of limited jurisdiction." *Id. s.* 11.

"This Act may be amended or repealed by any Act to be passed in this session of parliament." *Id. s.* 12.

2. *Application and Order.*

Having thus given the different sections of the new statute, relating to this subject, we shall now proceed to arrange the provisions of it in some kind of practical order. In the last

edition of this work, I had added forms upon this statute, which I had framed with great care and attention; but as the recent statute, 8 & 9 Vict. c. 10, has given a set of forms, and has enacted that proceedings according to those forms, "or to the like tenor and effect" shall be valid, I have in this edition substituted the forms given by the statute for those which I had framed.

In what cases, and by whom.] "Any single woman, who may be with child, or who may be delivered of a bastard child, after the passing of this act,—or who has been delivered of a bastard child within the period of six calendar months before the passing of this act,"—may make the application. 7 & 8 *Vict. c.* 101, *s.* 2. *See R.* v. *Walker et al., infra.* This will probably be holden to extend to widows: but not to married women, who, in the absence of their husbands, may have bastard children.

But no overseer or parish officer shall conduct any application for an order, or in any way interfere as such officer in causing such application to be made, or in procuring evidence in support of such application, under a penalty of forty shillings. *Id. s.* 7.

When.] The application may be made,—"either before the birth,—or at any time within twelve months from the birth of such child,—or at any time thereafter on proof that the man alleged to be the father of such child has within the twelve months next after the birth of such child paid money for its maintenance. *Id. s.* 2. And where a woman delivered of a bastard within six months before the passing of this act, obtained a summons against the putative father, but the justices at petty sessions afterwards refused to make an order, because before the passing of this Act an application had been made by the guardians of the poor for an order of maintenance against the putative father, under stat. 2 & 3 Vict. c. 85, and the petty sessions, after hearing the case, had refused the order: Wightman, J., upon application, granted a mandamus, commanding the justices to proceed upon the application, holding that the former application by the parish officers was no bar to the woman's application under this Act. *R.* v. *Walker et al.*, 14 *Law J.* 120 *m.*

Where an order already obtained, was quashed for some defect, and not upon the merits, the mother might have taken proceedings for obtaining a fresh order, at any time within six calendar months from the 8th May, 1845. 8 & 9 *Vict. c.* 10, *s.* 2. But the time here limited has expired.

The application, and to what justices.] The application must be by the mother. And it may be made to "any one justice

of the peace, acting for the petty sessional division of the county, or for the city, borough or place, in which she may reside." *Id. s.* 2. The application is for a summons, to be served upon the man alleged to be the father of the child; *Id.*; and upon his appearance to the summons, or his failing to appear, the mother then makes an application to the justices at petty sessions for an order that he shall pay her a weekly sum for its maintenance. *See* 7 & 8 *Vict. c.* 101, *s.* 3, *post.* The following may be the form of the application:—

Information and Application.

to wit. } *The information and application of* ——, *single woman, residing at* ——, *in the county of* ——, *before me, the undersigned* ——, *one of Her Majesty's justices of the peace acting for the* (*a*) petty sessional division of ——, in the said county *of* ——, *in which she resides, this* —— *day of* —— *in the year of our Lord one thousand eight hundred and forty* ——, *who saith, that she hath been delivered of a bastard child since the passing of the Act of the eighth year of the reign of Her present Majesty, intituled "An Act for the further amendment of the laws relating to the poor in England," and within twelve calendar months before this day, to wit, on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *and alleges that one* —— *of* ——, *in the county of* ——, *is the father of such child, and maketh application to me for a summons to be served upon the said* ——, *to appear at a petty session to be holden for the* petty sessional division (*a*) ——, *in which I usually act, to answer such complaint as she shall then and there make touching the premises.*

Exhibited before me, the day and year first above written, }

(*a*) Or *city, borough,* or other place, as the case may be.

The following may be the form where the father has paid for the maintenance of the child within twelve months:—

The like, after a year.

to wit. } *The information and application of* ——, *single woman, residing at* ——, *in the county of* ——, *before me, the undersigned* ——, *one of Her Majesty's justices of the peace acting for the* (*a*) petty sessional division of ——, in the said county *of* ——, *in which she resides, this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *who saith that she hath been delivered of a bastard child more than twelve calendar months before this day, to wit, on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *and alleges that one* —— *of* ——, *in the county*

(*a*) Or *city, borough,* or other place, as the case may be.

of ——, *is the father of such child, and having given proof to me that the said* —— *did within the twelve calendar months next after the birth of such child pay money for its maintenance, maketh application to me for a summons to be served upon the said* —— *to appear at a petty session to be holden for the* petty sessional division (*a*) ——, *in which I usually act, to answer such complaint as she shall then and there make touching the premises.*

Exhibited before me, the day and year first above written. }

(*a*) Or *city, borough,* or other place, as the case may be.

The woman's deposition upon oath.] If the application be before the birth of the child, "the woman shall make a deposition upon oath, stating who is the father of such child." *Id. s.* 2. The following may be the form:—

Deposition, before birth.

} *Application and deposition of* ——, *a single woman, residing at* —— *in the county* (*a*) *of* ——, *taken upon oath before me, the undersigned* —— *one of Her Majesty's justices of the peace acting for the* (*a*) petty sessional division of ——, in the said county of —— *in which she resides, this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *who upon her* oath (*b*) *saith, that she is now with child, and that* —— *of* ——, *in the county of* ——, *is the father of the child with which she is now pregnant, and maketh application for a summons to be served upon the said* ——, *so alleged by her to be the father of the said child, to appear at a petty session to be holden after the birth of such child for the* petty sessional division (*a*) —— *of* ——, *in which I usually act, to answer such complaint as she shall then and there make touching the premises.*

Exhibited and sworn before me, the day and year first above written. }

(*a*) or *city, borough,* or other place. (*b*) *or* affirmation.

The summons.] Upon the woman making this application, and, when necessary, making a deposition on oath as to the father of the child,—the "justice of the peace shall thereupon issue his summons to the person alleged to be the father of such child, to appear at a petty session, to be holden after the expiration of six days at least for the petty sessional division, city, borough, or other place, in which such justice usually acts," *Id. s.* 2, if the application be after the birth of the child; but if the application be before the birth, the justice "shall summon the man to appear at some petty session at which he usually acts, to be held on a day after the time when the said mother shall expect the child to be born." 8 & 9 *Vict. c.* 10,

s. 4. If there be two or more petty sessions usually holden in any such division, or where any justice acts for two or more of such divisions, he shall require the party, whom he shall summon, to appear at the petty sessions to be held in any such division as he shall deem fit. *Id. s.* 10. So, that although the mother must apply for the summons to a justice acting for the petty sessional division within which she resides, yet if that justice usually act for two divisions, he may make the summons attendable at either. The following may be the form of the summons after birth:—

Summons after birth.

to wit. } *To* ——, *of the parish of* ——, *in the county of* ——.

Whereas application hath been this day made to me, the undersigned, one of Her Majesty's justices of the peace for the (*a*) —— *of* ——, *by* ——, *single woman, residing at* —— *in the* (*b*) petty sessional division of the said county *for which I act, who hath been delivered of a bastard child since the passing of the Act of the eighth year of the reign of Her present Majesty, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," within twelve calendar months from the date hereof, and of which bastard child she alleges you to be the father, for a summons to be served upon you to appear at a petty session of the peace, according to the form of the statute in such case made and provided.*

These are therefore to require you to appear at the petty session of the justices holden at ——, *being the petty session for the* division (*b*) —— *in which I usually act, on* (*c*) —— *the* —— *day of* ——, *at* —— *of the clock in the* —— *noon in the year of our Lord one thousand eight hundred and forty* ——, *to answer any complaint which she shall then and there make against you touching the premises.*

Herein fail you not.

Given under my hand, at —— *in the* county (*b*) —— *this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——.

Note.—*If you neglect to appear at the petty sessions as above stated, the justices, upon proof that this summons has been duly served upon you, or left at your last place of abode, may proceed, if they think fit, to make an order upon you, as the putative father of the child above referred to, to pay a weekly sum to the said mother for its maintenance, and other sums for costs and expenses.*

(*a*) or *county*, *city*, or *borough*, or other place, as the case may be.

(*b*) or *city*, *borough*, or other place.

(*c*) Insert some day, at least six days after the date of the summons, and after the day when the same can be served upon the man, or at his place of abode.

The following may be the form after birth, where the father has paid for the maintenance of the child within twelve months:—

Summons, after a year.

to wit. } *To* ——, *of the parish of* ——, *in the county of* ——.

Whereas application hath been this day made to me, the undersigned, one of Her Majesty's justices of the peace for the (*a*) —— *of* ——, *by* ——, *single woman, residing at* ——, *in the* (*b*) petty sessional division of the said county *for which I act, who hath been delivered of a bastard child more than twelve calendar months before this day, of which bastard child she alleges you to be the father, and for the maintenance whereof she hath given me proof that you did within the twelve calendar months next after its birth pay money, for a summons to be served upon you to appear at a petty sessions of the peace, according to the form of the statute in such case made and provided.*

These are therefore to require you to appear at the petty session of the justices holden at ——, *being the petty session for the* division (*b*) —— *in which I usually act, on* (*c*) —— *the* —— *day of* ——, *at* —— *of the clock in the* —— *noon, in the year of our Lord one thousand eight hundred and forty* ——, *to answer any complaint which she shall then and there make against you touching the premises.*

Herein fail you not.

Given under my hand, at —— *in the* county (*b*) ——, *this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——.

Note.—*If you neglect to appear at the petty sessions, as above stated, the justices, upon proof that this summons has been duly served upon you, or left at your last place of abode, may proceed, if they think fit, to make an order upon you, as the putative father of the child above referred to, to pay a weekly sum to the said mother for its maintenance, and other sums for costs and expenses.*

(*a*) or *county, city, borough,* or *other place,* as the case may be.
(*b*) or *city, borough,* or other place.
(*c*) Insert some day, at least six days after the date of the summons, and after the day when the same can be served upon the man, or at his place of abode.

The following may be the form of the summons before birth:—

Snmmons before birth.

to wit. } *To* ——, *of the parish of* ——, *in the county of* ——.

Whereas an application hath been made to me, the undersigned,

one of Her Majesty's justices of the peace for the (*a*) county *of* ——, *by* ——, *single woman, residing at* ——, *in the* (*a*) petty sessional division of the said county *for which I act, now with child, of which child she hath this day duly* sworn on oath (*b*) *before me the said justice that you are the father, for a summons to be served on you to appear at a petty session, according to the form of the statute in such case made and provided.*

These are therefore to require you to appear at the petty session of the justices holden at ——, *being the petty session for the* division (*a*) —— *in which I usually act, on* (*c*) —— *the* —— *day of* ——, *at* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *to answer any complaint which she shall then and there make against you touching the premises.*

Herein fail you not.

Given under my hand, at ——, *in the* county (*a*) ——, *this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——.

Note.—*If you neglect to appear at the petty sessions as above stated, the justices, upon proof that this summons has been duly served upon you, or left at your last place of abode, may proceed, if they think fit, at the petty sessions therein named, to make an order upon you, as the putative father of the child above referred to, to pay a weekly sum to the said mother for its maintenance, and other sums for costs and expenses.*

(*a*) or *city, borough,* or other place.
(*b*) *or* affirmed.
(c) Insert some day when the petty session will be held after the birth of the child, and at such a distance of time that six days at least may elapse after the issuing of the summons and the service on the man, or at his place of abode, before the petty session.

Witnesses.] If it be necessary to summon a witness, or to enforce his attendance, the justices have now authority to do so by stat. 7 & 8 Vict. c. 101, s. 70, by which it is enacted that in any proceedings to be had before justices in petty sessions, under the provisions of this Act, if any party to such proceedings request that any person be summoned to appear as a witness in such proceedings, it shall be lawful for any justice to summon such person to appear and give evidence upon the matter of such proceedings: and if any person so summoned neglect or refuse to appear to give evidence at the time and place appointed in such summons, and if proof upon oath be given of personal service of the summons upon such person, and that the reasonable expenses of attendance were paid or tendered to such person, it shall be lawful for such justice, by warrant under his hand and seal, to require such person to be

brought before him, or any justices before whom such proceedings are to be had; and if any person, coming or brought before any such justices in any such proceedings, refuse to give evidence thereon, it shall be lawful for such justices to commit such person to any house of correction within their jurisdiction, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person shall sooner submit himself to be examined; and in case of such submission, the order of any such justice shall be a sufficient warrant for the discharge of such person."

The following may be the form of the summons :—

Berks. To E. F., of ——, *in the county aforesaid, labourer. Forasmuch as one Jane Styles, single woman, hath made complaint* [reciting the summons, to the words] *to answer in that behalf; and whereas the said* —— *hath requested that you may be summoned as a witness in the said proceeding: These are therefore to require you to appear before the justices of the peace at the petty session to be holden on* ——, *at* ——, *in and for the said petty sessional division* [or *city* or *borough*] *of* —— *aforesaid, to testify what you may know in that behalf. And herein fail you not. Given under my hand and seal this* —— *day of* ——, *in the year of our Lord* ——, *at* ——, *in the said county.*

The following may be the form of the warrant :—

Berks: To ——

Forasmuch as one Jane Styles, [reciting the summons to the putative father, to the words] *to answer in that behalf: and whereas, at the request of* ——, *I, J. P., esquire, one of Her Majesty's justices of the peace in and for the said county, on* ——, *at* ——, *did issue my summons unto E. F., of* ——, *in the said county, labourer, wherein, after reciting the complaint aforesaid, I required him to appear* [&c. as in the summons to the witness to the words] *to testify what he might know in that behalf; and whereas the said E. F. hath neglected to appear to give evidence at the time and place appointed in such summons, according to the exigency of the said summons, but hath disobeyed the same; and proof upon oath hath now been given before me, of the personal service of the said last mentioned summons upon the said A. B., and that* —— *for his reasonable expenses of attendance were then paid* [or *tendered*] *to him: These are therefore to command you forthwith to bring the said E. F. before me the said justice at* —— [any petty session to which the application may have been adjourned,] *or before such other justices as may be then there present, to be examined concerning the matter aforesaid, and to be further dealt with according to law. Herein fail you not. Given*

under my hand and seal this —— day of ——, in the year of our Lord ——.

This warrant it seems must be signed by the same justice who issued the summons to the witness.

Hearing and order.] "After the birth of such bastard child, on the appearance of the person so summoned, or on proof that the summons was duly served on such person, or left at his last place of abode six days at least before the petty session, the justices in such petty session shall hear the evidence of such woman, and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father; and if the evidence of the mother be corroborated in some material particular by other testimony, to the satisfaction of the said justices, they may adjudge the man to be the putative father of such bastard child; and they may also, if they see fit, having regard to all the circumstances of the case, proceed to make an order on the putative father for the payment to the mother of the bastard child, or to any person who may be appointed to have the custody of such child under the provisions of this Act, of a sum of money weekly, and of such costs as may have been incurred in the obtaining of such order, including, if they think proper, ten shillings for the midwife, and ten shillings towards the funeral expenses of the child, provided it have died before the making of such order; and if the application be made before the birth of the child, or within two calendar months after the birth of the child, such weekly sum may, if the said justices think fit, be calculated from the birth of the child, at a rate not exceeding five shillings per week for the first six weeks after the birth of such child; and in other cases such sum shall not exceed two shillings and sixpence per week from the time of the making of the application." *Id. s.* 3.

"The justices in petty sessions as aforesaid, may adjourn the hearing of the case, as often as to them shall seem fit: but no such order shall be made, unless applied for at such petty sessions within the space of forty days from the service of the summons after the birth of the bastard child, on the person alleged to be the father of such bastard child." *Id. s.* 4.

But where the application for the summons has been made before the birth of the child, if on the day mentioned in the summons for the appearance of the putative father, "the woman shall not have been delivered, or the justices shall be satisfied that she has been delivered at so short a period before such day that she cannot appear at the said session, it shall be lawful for the justices thereat to adjourn the hearing of the said case until some other day, and so from time to time until the child shall have been born, and the woman shall be able to attend at the said session; and it shall be lawful for the jus-

tices at their petty session to make an order in respect of any such application so made by such woman so pregnant to a justice as aforesaid, if she apply at such petty session within the space of two calendar months from the birth of the child, although more than forty days shall have elapsed from the time when the summons was served upon the alleged father, or was left at his last place of abode." 8 & 9 *Vict. c.* 10, *s.* 4.

The mother may make her application, and the putative father may appear and make his answer, "by counsel or attorney," and they may have all witnesses examined and cross-examined by such counsel or attorney. *Id. s.* 7.

The following may be the form of the order, where the application for the summons was made before birth:—

Order, where the summons was before birth.

to wit. } *At a petty session of Her Majesty's justices of the peace for the* county (*a*) *of* ——, *holden in and for the* —— (*a*) division *of* ——, *in the said* county (*a*), *at* ——, *on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *before us* —— *Her Majesty's justices of the peace for the said* (*a*) county.

Whereas one ——, *single woman, residing at* ——, *within this* (*a*) division, *being with child, did on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *make application to* ——, *one of Her Majesty's justices of the peace acting for this* (*a*) division, *for a summons to be served upon one* —— *of the parish of* ——, *in the* county (*a*) *of* ——, *whom she,* being duly sworn *before the said* ——, upon her oath stated (*b*) *to be the father of the child with which she was then pregnant; and the said justice thereupon issued his summons to the said* ——, *to appear at a petty session to be holden on this day for this* division (*a*) *in which the said justice usually acts, to answer her complaint touching the premises: And whereas the said* —— *hath been lately delivered of a bastard child: And whereas the said* —— *having been duly served with the said summons,* and appearing in pursuance thereof (*c*) ——; *and the said* —— *having now applied to us, the justices in petty session assembled, for an order upon the said* —— *according to the form of the statute in such case made and provided; and it being now proved to us,* in the presence and hearing of the said (*d*) ——, *that the said child was, since the passing of an Act passed in the eighth year of the reign of Her*

(*a*) or *city, borough,* or other place, as the case may be.

(*b*) *or* affirmed.

(*c*) Insert here, if the defendant do not appear, "*six days at least before this day, as is now proved before us,*" or "*the same having been left at his last place of abode six days at least before this day, as is now proved before us,*" and erase the words in roman.

(*d*) Should the defendant not appear, erase the words in roman.

present Majesty, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," that is to say, on the —— day of ——, in the year of our Lord one thousand eight hundred and forty ——, born a bastard of the body of the said ——; and we having, in the presence and hearing of the said (*d*) ——, *heard the evidence of such woman —— and such other evidence as she hath produced,* and having also heard all the evidence tendered by (*e*) ——, the said ——, *and the evidence of the said ——, the mother of the said child, having been corroborated in some material particular by other testimony to our satisfaction, do hereby adjudge the said —— to be the putative father of the said bastard child; and, having regard to all the circumstances of this case, we do now hereby order, that the said —— do pay unto the said ——, the mother of the said bastard child, so long as she shall live and shall be of sound mind, and shall not be in any gaol or prison, or under sentence of transportation, or to the person who may be appointed to have the custody of such child under the provisions of the said statute,* the sum of (*f*) —— per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks *the sum of* (*g*) —— *per week ——, until the said child shall attain the age of thirteen years, or shall die or the said —— shall marry: And we do hereby further order the said —— to pay to the said —— the sum of ——, being the costs incurred in obtaining this order.* (*h*)

Given under our hands and seals, at the session aforesaid.

(*d*) Should the defendant not appear, erase the words in roman.

(*e*) Should the defendant appear by attorney or counsel, it will be then only necessary to erase the word "*by*" and add "*on behalf of*;" but should he not appear himself, or by attorney or counsel, then erase the words in roman.

(*f*) Not to exceed five shillings. If the justices decline to allow the payment, from the birth, of any sum, erase the words in roman, and before the word "*until*" insert the time from which payment is to be made, according to their judgment.

(*g*) Not to exceed two shillings and sixpence.

(*h*) If the justices should decide upon allowing such expenses, insert here, "*and the sum of ten shillings for the midwife.*"

See R. v. *Milner et al.* 14 *Law J.* 157, *m. R.* v. *JJ. of Cheshire,* 15 *Law J.* 3, *m. R.* v. *Rose et al., Id.* 6.

The following may be the form, where the application for the summons was made after birth:—

Order, where the summons was after birth.

to wit. } *At a petty session of Her Majesty's justices of the peace for the* county (*a*) *of ——, holden in and for the ——* (*a*) division *of ——, in the said* (*a*) county, *at ——, on the —— day of ——, in the year of our Lord one thousand*

(*a*) or *city, borough,* or other place, as the case may be.

eight hundred and forty ——, *before us* —— *Her Majesty's justices of the peace for the said* (*a*) county.

Whereas one ——, *single woman, residing at* ——, *within this* —— (*a*) division —— *did, on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *having been delivered of a bastard child* within *twelve calendar months prior thereto, make application to* ——, *one of Her Majesty's justices of the peace acting for this* (*a*) division, *for a summons to be served upon one* ——, *of* ——, *whom she alleged to be the father of the said child* (*b*); *and the said justice thereupon issued his summons to the said* —— *to appear at a petty session to be holden on this day for this* (*a*) division ——, *in which the said justice usually acts, to answer her complaint touching the premises:*

And whereas the said —— *having been duly served with the said summons within forty days from* this day (*c*) —— (*d*) and now appearing in pursuance thereof ——, *and the said* —— *having now applied to us the justices in petty session assembled, for an order upon the said* ——, *according to the form of the statute in such case made and provided; and it being now proved to us,* in the presence and hearing of the said (*e*) ——, *that the said child was,* since (*f*) *the passing of an Act passed in the eighth year of the reign of Her present Majesty, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," (that is to say) on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *born a bastard of the body of the said* ——; *and we having,* in the presence and hearing of the said (*e*) ——, *heard the evidence of such woman* —— *and such other evidence as she hath produced,* and having also heard all the evidence tendered by (*g*) ——, the said ——, *and the evidence of the*

(*a*) or *city, borough,* or other place, as the case may be.

(*b*) When the application is made after the expiration of twelve months from the birth, but the alleged father has paid money for the maintenance of the child, for the word "*within*" substitute the words "*more than*"; and after the word "*child*" insert "*and who was proved before the said justice to have paid money for the maintenance of the said child within twelve calendar months after its birth.*"

(*c*) If the order be made at an adjourned session, insert the day of the commencement of the session, adding these words, "*from which day the hearing of this case hath been adjourned,*" and erase the words "*this day.*"

(*d*) If the defendant do not appear, insert here, "*and six days at least before this day, as is now proved before us,*" or "*the same having been left at his last place of abode six days at least before this day, as is now proved before us,*" and erase the words which follow in roman.

(*e*) Should the defendant not appear, erase the words in roman.

(*f*) or "*within six calendar months before.*"

(*g*) Should the defendant appear by attorney or counsel, it will be then only necessary to erase the word "*by*" and add "*on behalf of*"; but should he not appear himself, or by attorney or counsel, then erase the words in roman.

said ——, *the mother of the said child, having been corroborated in some material particular by other testimony to our satisfaction, do hereby adjudge the said* —— *to be the putative father of the said bastard child; and, having regard to all the circumstances of this case, we do now hereby order, that the said* —— *do pay unto the said* —— *the mother of the said bastard child, so long as she shall live and shall be of sound mind, and shall not be in any gaol or prison, or under sentence of transportation, or to the person who may be appointed to have the custody of such bastard child under the provisions of the said statute, the sum of* (*h*) —— per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks the sum of —— per week —— *until the said child shall attain the age of thirteen years, or shall die, or the said* —— *shall marry: And we do hereby further order the said* —— *to pay to the said* ——, *the sum of* ——, *being the costs incurred in obtaining this order.* (*i*)

Given under our hands and seals, at the session aforesaid.

(*h*) Not to exceed five shillings. This larger amount for the six weeks cannot be allowed, unless the application has been made within two calendar months after the birth. If the application has not been made within this time, or the justices do not think it right to allow that or any less sum from the birth, erase the words in roman, and proceed thus: "—— *per week from the said* —— *day of* —— *last, being the day upon which such application was made to the said justice as aforesaid.*"

(*i*) If the justices should decide upon allowing such expenses, insert here, "*and the sum of ten shillings for the midwife.*"

It is remarkable that the statute makes no provision for securing the person of the alleged father, where the summons is applied for before the birth, so that he may be forthcoming at the time the application shall be made for the order. The order, it will be observed, cannot be made, nor have the justices any jurisdiction to receive evidence in respect of it, until after the birth of the child; *see sect.* 3, *ante*, p. 183; the woman may apply for and serve the summons at any time after she is with child; *ante*, p. 176; but as no order can be made, except perhaps by consent, until after the child is born, the summons is made attendable accordingly at a time when it is probable that the woman will have been delivered and will be able to attend. But in the meantime the man may abscond; there is no mode of compelling him to abide the event of the woman's application to the justices at petty sessions.

But "no order for the maintenance or support of any such bastard child made in pursuance of this Act shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of

whom it was made has attained the age of thirteen years, or after the marriage of the mother of such child, or after the death of such child." *Id. s.* 5.

And every clerk to the justices shall once in each year, (that is to say,) as soon as may be after the first day of January, make up, in the form in the schedule (A) annexed to this act, and forward to the clerk of the peace, a complete list of summonses issued, applications heard, and orders made as aforesaid since the first day of January of the year preceding, by the justices to whom he acts as clerk; and every clerk of the peace shall receive such lists, and shall, on demand of the clerk to the justices, acknowledge under his hand the receipt of any such list, and shall preserve the said lists, and shall, as soon as may be after the receipt of such lists, transmit copies thereof, duly certified, to Her Majesty's principal secretary of state for the home department, and shall also transmit a list of all the cases in which appeals have been made to the court of quarter sessions during the same period, with the result of every such appeal; and it shall be lawful for the justices of the peace, at their respective general quarter sessions of the peace, to make and settle a fee or fees to be paid to every such clerk to the justices for every such list; and on production by any such clerk to the justices of the acknowledgment by the clerk of the peace of the receipt of such list, the treasurer of the county shall pay the fee so made and settled, and due in respect of any such list, out of the county stock in the hands of such treasurer. *Id. s.* 11.

To whom the money shall be paid.] All monies payable under any order as aforesaid shall be due and payable to the mother of the bastard child in respect of such time and so long as she lives and is of sound mind, and is not in any gaol or prison, or under sentence of transportation; and after the death of the mother of such bastard child, or whilst such mother is of unsound mind, or confined in any gaol or prison, or under sentence of transportation, any two justices may, if they see fit, by order under their hands and seals from time to time appoint some person who, with his own consent, shall have the custody of such bastard child, so long as such bastard child is not chargeable to any parish or union, and any two such justices may revoke the appointment of such person, and may appoint another person in his stead; and every person so appointed to have the custody of a bastard child shall, so long as such child is not chargeable to any parish or union, be empowered to make application for the recovering of all payments becoming due under the order of the court of petty session as aforesaid, in the same manner as the mother of such bastard child might have done; and the clerk to the justices making any order on the putative father of a bastard

child, or appointing any person to have the custody of such child, as herein-before provided, shall, as soon as may be, send by post or otherwise a duplicate of such order or appointment, signed by such clerk, to the clerk to the guardians of the union or parish in which the mother of such bastard child resided at the time of making such order or appointment. *Id. s.* 5.

But it shall not be lawful for any justice of the peace to appoint any officer of any parish or union to have the custody of any bastard child as herein-before provided, or for any officer of any parish or union, clerk of justices, or constable, to receive any money in respect of any bastard child under an order of petty session as aforesaid, or as such officer to conduct any application to make or enforce such order, or in any way to interfere as such officer in causing such application to be made, or in procuring evidence in support of such application, under a penalty of forty shillings, to be levied on conviction before any two justices as penalties and forfeitures under the said first-recited Act: Provided always, that after the death of such mother, or if such mother be incapacitated as aforesaid, so often as any bastard child for whose maintenance such order of petty sessions has been made, becomes chargeable to any parish or union by the neglect of the putative father to make the payments due under the orders of justices, then and in such case it shall be lawful for any board of guardians of an union or parish, or if there be no such board of guardians for the overseers of any parish or place, to make such application for the enforcement of the order as might have been made by the mother of such bastard child if alive; but all payments for the maintenance of such child made in pursuance of such application shall be made to some person to be from time to time appointed by the justices as herein-before provided, and on condition that such bastard child shall cease to be chargeable to such parish or union. *Id. s.* 7.

Every person having the custody of any bastard child under any order of justices, as herein-before provided, who may misapply monies paid by the putative father for the support of such child, or may withhold proper nourishment from such child, or otherwise abuse and maltreat such child, shall, on conviction before any two justices, forfeit and pay a sum not exceeding ten pounds. *Id. s.* 8.

3. *Order, how enforced.*

Depositions as to arrears, and warrant.] If at any time after the expiration of one calendar month from the making of such order as aforesaid it be made to appear to any one justice, upon oath or affirmation, that any sum to be paid in pursuance of such order has not been paid, such justice may, by

warrant under his hand and seal, cause such putative father to be brought before any two justices. *Id. s.* 3.

The information of the mother as to the arrears due, may be in the following form :—

Information, to obtain payment of arrears.

} *The information and complaint of* ——, *of the*
to wit. } *parish of* ——, *in the* county (*a*) *of* ——, *single woman, taken upon* oath (*b*) *before me* ——, *one of Her Majesty's justices of the peace for the said* county (*a*), *the* (*c*) —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty, who saith, that by an order made under the authority of the statute passed in the eighth year of the reign of Her present Majesty, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," at the petty session holden in and for the* division of (*a*) ——, in the county of (*a*) ——, *on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *by Her Majesty's justices of the peace in and for the said* county (*a*) ——, *acting for the said* division (*a*) ——, *then and there assembled,* —— *of* ——, *in the county of* ——, *was adjudged to be the putative father of a bastard child, then lately born of her body, and that in and by the said order it was ordered that the said* —— *should pay to her the said* —— *so long as she should live or should be of sound mind, and should not be in any gaol or prison, or under sentence of transportation, or to the person who might be appointed to have the custody of such bastard child, under the provisions of the said statute,* the sum of —— per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks (*d*) *the sum of* —— *per week until such child should attain the age of thirteen years, or should die, or she the said mother should marry,* and the sum of ten shillings for the midwife, and the sum of —— for the costs incurred in the obtaining such order.

And this deponent further saith, that the said —— *hath had due notice of the said order, and that the said bastard child is now living under the age of thirteen years, and that she the said deponent hath not been married since the said order was made, and that the payments directed to be made by the said order have not been made according thereto by the said* ——, *and that there is now in arrear for the same the sum of* ——, *being the amount of arrears for* —— *weeks' payments, and* ten shillings for the midwife, and the sum of ——, for the costs incurred in the

(*a*) or *city, borough,* or other place.

(*b*) or *affirmation.*

(*c*) This must not be before the expiration of one calendar month from the order.

(*d*) If the sum for the first six weeks should not have been ordered, erase the words in roman.

obtaining such order; *and this informant therefore prays justice in the premises.*

Exhibited and sworn before me, the day and year first above written, at ——, *in the* county (*a*) ——.

(*a*) or *city, borough,* or other place.

The warrant to apprehend the putative father, may be in the following form:—

Warrant thereon.

to wit. } *To the constable of* ——, *in the* county (*a*) *of* ——, *and all Her Majesty's officers of the peace in and for the said* county (*a*) *whom these may concern.*

Whereas information and complaint have been made upon oath (*b*) *before me, one of Her Majesty's justices of the peace for the* county (*a*) *of* ——, *the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *by* ——, *of the parish of* ——, *in the* county (*a*) *of* ——, *single woman, that by an order made under the authority of the statute passed in the eighth year of the reign of Her present Majesty, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," at the petty session holden in and for the* division (*a*) *of* ——, *in the* county (*a*) *of* ——, *on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *by Her Majesty's justices of the peace in and for the said* county (*a*) *acting in and for the said* division (*a*) *then and there assembled,* —— *of* ——, *in the county of* ——, *was adjudged to be the putative father of a bastard child, then lately born of her body, and that in and by the said order it was ordered that the said* —— *should pay to her the said* —— *so long as she should live and should be of sound mind, and should not be in any gaol or prison, or under sentence of transportation, or to such person as might be appointed to have the custody of such bastard child, under the provisions of the said statute,* the sum of —— per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks *the sum of* —— *per week until such child should attain the age of thirteen years, or should die, or she the said mother should marry,* and the sum of ten shillings for the midwife, and the sum of ——, for the costs incurred in obtaining such order; *and that the said* —— *had had due notice of the said order, and that the said bastard child is now living under the age of thirteen years, and that she the said mother hath not been married since the said order was made, and that the payments directed to be made by the said order have*

(*a*) or *city, borough,* or other place. (*b*) or *affirmation.*

not been made according thereto by the said ——, *and that there is now in arrear for the same the sum of* ——, *being the amount of arrears for* —— *weeks payments*, and ten shillings for the midwife, and the sum of —— for the costs incurred in the obtaining such order.

These are, therefore, in Her Majesty's name, to command you, the said constable, or other officers of the peace, or some or one of you, forthwith to apprehend the said ——, *and convey him before two of Her Majesty's justices of the peace in and for the said* county (*a*), *to answer the premises, and be dealt with according to law.*

Given under my hand and seal, at ——, *in the* county (*a*) *of* ——, *this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——.

(*a*) or *city*, *borough*, or other place.

By sect. 5, after the death of the mother, or whilst she is of unsound mind, or confined in any gaol or prison, or under sentence of transportation, two justices may, by order under their hands and seals, from time to time appoint some person who, with his own consent, shall have the custody of such bastard child, so long as such bastard child is not chargeable to any parish or union, and any two such justices may revoke the appointment of such person, and may appoint another person in his stead; and every person so appointed to have the custody of a bastard child shall, so long as such child is not chargeable to any parish or union, be empowered to make application for the recovering of all payments becoming due under the order of the court of petty session as aforesaid, in the same manner as the mother of such bastard child might have done. *Id. s.* 5.

This appointment of guardian may be as follows:—

Appointment of Guardian.

to wit. } *Whereas the justices assembled at a petty session of Her Majesty's justices of the peace for the* county (*a*) *of* ——, *holden in and for the* division of (*a*) ——, in the county of (*a*) ——, *at* ——, *on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *by an order under their hands and seals, reciting that one* ——, *single woman, residing at* ——, *within the said* division (*a*), *did, on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *make application to* ——, *one of Her Majesty's justices of the peace acting for the said* division (*a*), *for a summons to be served upon one* ——, *and the said justice thereupon issued his summons to the said*

(*a*) or *city*, *borough*, or other place.

——, *to appear at a petty session to be holden on the —— day of ——, in the year of our Lord one thousand eight hundred and forty ——, for the said* division (*a*) *in which he usually acted, to answer her complaint touching the premises:**

And that the said —— having been duly served with the said summons, within forty days from the said —— day of ——, and that the said —— having then applied to the said justices in petty sessions assembled for an order upon the said ——, according to the form of the statute in such case made and provided: And that it having been then proved to the said justices —— that the said child was since (*b*) *the passing of an Act passed in the eighth year of the reign of Her present Majesty, intituled "An Act for the further Amendment of the Laws relating to the Poor in England," (that is to say,) on the —— day of ——, in the year of our Lord one thousand eight hundred and forty ——, born a bastard of the body of the said ——: And that the said justices, having —— heard the evidence of such woman, and such other evidence as she had produced, ——, and the evidence of the said ——, the mother of the said child, having been corroborated in some material particular by other testimony, to their satisfaction, did adjudge the said —— to be the putative father of the said child, and, having regard to all the circumstances of that case, did order that the said —— should pay unto ——, the mother of the said bastard child, so long as she should live and be of sound mind, and be not in any gaol or prison, or under sentence of transportation, or to the person who might be appointed to have the custody of such child, under the provisions of the said statute, the sum of ——, until the said child should attain the age of thirteen years, or should die, or the said —— should marry: And they did further order the said —— to pay to the said ——, the sum of ——, being the costs incurred in obtaining their order:*

And whereas the said —— hath not married since the making of the said order, but hath lately (*c*) *——, and the said child is still alive, and under the age of thirteen:*

Now we ——, two of Her Majesty's justices of the peace acting in and for the county (*a*) *of ——, do hereby order and appoint one ——, of ——, in the* county *of* (*a*) *——, not being an officer of any parish or union, and having consented thereto, to have the custody of such bastard child, so long as such bastard child shall not be chargeable to any parish or union.*

Given under our hands and seals, at ——, in the county

(*a*) or *city, borough,* or other place.

* This form must be completed, in regard to the recitals, by reference to the order of the justices.

(*b*) or *within six calendar months before.*

(*c*) *died,* or *become of unsound mind,* or *is now in the gaol* or *prison of ——, in the county of ——,* or *is under sentence of transportation.*

of (*a*) ——, *this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——.

N.B.—*A duplicate of this appointment is to be sent through the post or otherwise, by the clerk of the justices, to the clerk of the guardians of the union or parish wherein the mother of the said child resided at the time when she died, or ceased to be entitled to receive the payments under the order.*

(*a*) or *city, borough,* or other place.

But if, after the death of the mother, or in case she be incapacitated as aforesaid, such bastard child becomes chargeable to any parish or union by the neglect of the putative father to make the payments due under the orders of justices, then and in such case it shall be lawful for any board of guardians of an union or parish, or if there be no such board of guardians for the overseers of any parish or place, to make such application for the enforcement of the order as might have been made by the mother of such bastard child if alive; but all payments for the maintenance of such child made in pursuance of such application shall be made to some person to be from time to time appointed by the justices as herein-before provided, and on condition that such bastard child shall cease to be chargeable to such parish or union. *Id. s.* 7.

Warrant of distress.] If, upon being brought before such two justices, "such putative father neglect or refuse to make payment of the sums due from him under such order, or since any commitment for disobedience to such order as herein-after provided, together with the costs attending such warrant, apprehension, and bringing up of such putative father, such two justices may, by warrant under their hands and seals, direct the sum so appearing to be due, together with such costs, to be recovered by distress and sale of the goods and chattels of such putative father, and may order such putative father to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless he give sufficient security, by way of recognizance or otherwise, to the satisfaction of such justices, for his appearance before two justices on the day which may be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security." *Id. s.* 3.

But this must be understood of cases where the putative father has no legal excuse for not paying the weekly sum ordered; for he may show that the child is dead, —or that the mother is dead, or of unsound mind, or in prison or transported, and that no person has as yet been appointed to have the custody of the child;—in which case of course no warrant of distress should be granted.

Provided always, that if the woman have allowed the weekly

payment to be in arrear for more than thirteen successive weeks, without application to a justice, the man shall not be called upon to pay more than the amount due for thirteen weeks in discharge of the whole debt, and no warrant of distress shall be issued for more than the amount of arrears for thirteen weeks' payment in discharge of the whole arrears or debt. *Id. s.* 3.

The following may be the form of the warrant of distress:—

Warrant of Distress.

to wit. } *To the constable of* ——, *in the county of* ——.

Whereas information and complaint were, on the —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *made upon* oath (*b*) *before* ——, *one of Her Majesty's justices of the peace in and for the said* county, (*a*) *by* ——, *of the parish of* ——, *in the* county (*a*) *of* ——, *single woman, that by an order made at the petty session holden in and for the* —— division (*a*) of ——, in the county of (*a*) ——, *on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *by Her Majesty's justices of the peace in and for the said* county (*a*) *acting in and for the said* division (*a*) *then and there assembled,* —— *of* —— in the county (*a*) of ——, *was adjudged to be the putative father of a bastard child, then lately born of her body, and that in and by the said order it was ordered that the said* —— *should pay to her the said* ——, *so long as she should be of sound mind, and should not be in any gaol or prison, or under sentence of transportation, or to the person who might be appointed to have the custody of the said child under the provisions of the said statute,* the sum of —— per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks, *the sum of* —— *per week until such child should attain the age of thirteen years, or should die, or she the said mother should marry,* and the sum of ten shillings for the midwife, and the sum of —— for the costs incurred in obtaining such order; *and that the said* —— *had had due notice of the said order, and that the said bastard child was then living, under the age of thirteen years, and that she the said mother had not been married since the said order was made, and that the payments directed to be made by the said order had not been made according thereto by the said* ——, *and that there was then in arrear for the same the sum of* ——, *being the amount of arrears for* —— *weeks' payments, and* ten shillings for the midwife, and the sum of —— for costs incurred in obtaining such order.

And whereas the said justice, by warrant under his hand and seal directed to the constable of the said parish of ——, *and all Her*

(*a*) or *city, borough,* or other place. (*b*) or *affirmation.*

Majesty's officers of the peace in and for the said county (*a*) *commanded him, or some or one of them, forthwith to apprehend the said* ——, *and to convey him before two of Her Majesty's justices of the peace for the said* county (*a*), *to answer the premises, and be dealt with according to law. Whereupon the said* ——, *being now brought before us, two of Her Majesty's justices of the peace for the said* county (*a*), *to show cause why the same should not be paid, hath not shown any cause why the same should not be paid; and the same duly appearing to us upon oath to be due from the said* ——, *under the said order, together with the further sum of* ——, *for the costs attending such warrant, apprehension, and bringing up of him, the said* —— *nevertheless* neglects (*d*) *to make payment of the said sums due under the said order, and the said sums so due for such costs.*

These are therefore to require you forthwith to make distress of the goods and chattels of the said ——, *and if within the space of* —— *days next after such distress by you taken the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale thereof, that you detain the said sums, and also the reasonable charges of taking, keeping, and selling the said distress, rendering the overplus (if any), on demand, unto the said* ——; *and if no sufficient distress can be found, that then you certify the same unto us, or unto* (*e*) ——, *two of Her Majesty's justices of the peace acting for the said* county (*a*), *to the end that such further proceedings may be had therein, as to law doth appertain: and we further order you to make return to this warrant, on the* —— *day of* —— *next, unto us or such justices as aforesaid.*

And whereas (*f*) *the said* —— *not having given sufficient security, by way of recognizance or otherwise, to our satisfaction, for his appearance on the return of this warrant, we do hereby further order you to detain the said* ——, *and keep him in safe custody until the said return can be conveniently made, and then bring him before us or such justices as aforesaid.*

Given under our hands and seals, at ——, *in the* county (*a*) *of* ——, *this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——.

(*a*) or *city, borough,* or other place.

(*d*) or *refuses.*

(*e*) If the party give security for his appearance, insert the names of the justices before whom he is to appear; but should he not find such security, insert the word "*any.*"

(*f*) Should the party find security for his appearance on the return of the warrant, erase this paragraph.

The following may be the form of the recognizance for appearance at the return of the distress warrant:—

Recognizance.

Recognizance in the common form, subject to the following condition :—

to wit. } *Whereas the above-bounden* ——, *having been apprehended upon a warrant issued under the hand and seal of* ——, *one of Her Majesty's justices of the peace in and for the* county (*a*) *of* ——, *upon the information and complaint of* ——, *for disobedience to an order made in the petty session holden in and for the* division (*a*) of ——, in the county *of* ——, *on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *by Her Majesty's justices of the peace then and there assembled, whereby he was adjudged to be the putative father of a bastard child, lately born of the body of the said* ——, *single woman, and ordered to pay certain sums of money as therein set forth; and having been brought before* ——, *two of Her Majesty's justices of the peace for the said* county (*a*), *by virtue of the said warrant, and having neglected* (*b*) *to make payment of the sums due from him under such order, together with the costs attending such warrant, apprehension, and bringing of him up before such justices, they have, by warrant under their hands and seals, addressed to the constable of the parish of* ——, *directed the sum so due, together with such costs, to be recovered by distress and sale of the goods and chattels of the said* ——, *and have made the said warrant returnable on the* —— *day of* ——, *to them, or unto* ——, *two justices of the peace acting for the said* county (*a*).

Now the condition of this recognizance is such, that if the above-bounden —— *do appear before the justices unto whom the said warrant is made returnable on the day so appointed for the return thereof, to abide the further proceedings thereon, then the same shall be of no effect, otherwise to remain in full force.*

Taken and acknowledged the —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *at* ——, *in the* county (*a*) *of* ——, *before me, the undersigned, one of Her Majesty's justices of the peace in and for the said* county (*a*) *of* ——.

(*a*) or *city, borough,* or other place. (*b*) or *refused.*

Warrant of commitment, for want of distress.] If upon the return of such warrant, or if by the admission of such putative father, it appear that no sufficient distress can be had, [within the jurisdiction of the justices before whom he shall have been brought under the warrant, *ante*, p. 194, 8 & 9 Vict. c. 10, s. 8,] then any such two justices may, if they see fit, by warrant under their hands and seals, cause such putative father to be committed to the common gaol or house of correction of the county, city, borough, or place where they have jurisdiction, there to remain without bail or mainprize for any term not exceeding three calendar months, unless such sum and costs, and all reasonable charges attending the said distress, together with

the costs and charges attending the commitment and conveying to gaol or to the house of correction, and of the persons employed to convey him thither, be sooner paid and satisfied." *Id s.* 3.

The following may be the form of the commitment for want of distress :—

Commitment, upon return of Distress Warrant.

} *To the constable of* ——, *in the* county (*a*) *of* ——, to wit. } *and to the keeper of the* common gaol (*b*) *at* ——, *in the county of* ——.

Whereas information and complaint were, on the —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *made* upon oath (*c*) *before* ——, *one of Her Majesty's justices of the peace for the said* county (*a*) *by* ——, *of the parish of* ——, *in the* county (*a*) *of* ——, *single woman, that by an order made under the authority of the statute, passed in the eighth year of the reign of her present Majesty, intituled "An Act for the further amendment of the laws relating to the poor in England," at the petty session holden in and for the* division (*a*) of ——, in the county *of* ——, *on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *by Her Majesty's justices of the peace for the said* county (*a*) *acting in and for the said* division (*a*) *then and there assembled,* —— *of* ——, *in the* county (*a*) *of* ——, *was adjudged to be the putative father of a bastard child then lately born of her body, and that in and by the said order it was ordered that the said* —— *should pay to her the said* ——, *so long as she should live and should be of sound mind, and should not be in any gaol or prison, or under sentence of transportation, or to such person as might be appointed to have the custody of such bastard child under the provisions of the said statute, the* sum of —— per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks, *the sum of* —— *per week* ——, *until such child should attain the age of thirteen years, or should die, or that she the said mother should marry,* and the sum of ten shillings for the midwife, and the sum of —— for the costs incurred in obtaining such order; *that the said* —— *had had due notice of the said order, and that the said bastard child was then living, under the age of thirteen years, and that she the said mother hath not been married since the said order was made, and that the payments directed to be made by the said order had not been made according thereto by the said* ——, *and there was then in arrear for the same the sum of* ——, *being the amount of arrears for* —— *weeks' payments,* and ten shillings for the midwife, and the sum of —— for the costs incurred in obtaining such order.

And whereas the said justice, by warrant under his hand and

(*a*) or *city, borough,* or other place.

(*b*) or *house of correction.*

(*c*) or *affirmation.*

seal, directed to the constable of the said parish of ——, *and all Her Majesty's officers of the peace in and for the said* county (*a*), *commanded him forthwith to apprehend the said* ——, *and to convey him before two of Her Majesty's justices of the peace for the said* county (*a*) *to answer the premises, and to be dealt with according to law. Whereupon the said* —— *being brought before two of Her Majesty's justices of the peace for the said* county (*a*) *to show cause why the same should not be paid, did not show any cause why the same should not be paid; and the same duly appearing upon oath to be due from the said* ——, *under the said order, together with the further sum of* ——, *for the costs attending such warrant, apprehension, and bringing up of him, but the said* —— neglecting (*e*) *to make payment of the said sums due under the said order, and the said sums so due for such costs, the said justices required the constable of the parish of* ——, *in the said warrant mentioned, forthwith to make distress of the goods and chattels of the said* ——, *and if no such distress could be found, then to certify the same unto them, or unto* ——, *two of Her Majesty's justices of the peace acting for the said* county (*a*), *to the end that such further proceedings might be had therein as to law appertained.*

And whereas it appears to us, ——, *two of Her Majesty's justices of the peace acting for the said* county (*a*), *by return of the said constable of the said* ——, *dated the* —— *day of* ——, *that he hath made diligent search, but doth not know of nor can find any goods and chattels of the said* ——, *by distress and sale whereof the said sums and costs can be recovered, pursuant to the said warrant; and that the costs incurred by the said constable in attempting to make such distress are* —— *shillings* ——.

And the said —— *is now before us* (*f*) ——.

These are therefore to command you, the said constable of ——, *to convey the said* —— *to the said* common gaol (*g*), *and these are also to command you, the said keeper of the said* common gaol (*g*), *to receive the said* —— *into the said* common gaol (*g*), *there to remain without bail or mainprize for the term of* (*h*) ——, *unless such sums and costs, and the aforesaid charges attending the attempt to make the said distress, together with the costs and charges* (*i*) *attending the commitment and conveying of the said* —— *to the said* common gaol (*g*), *and of the persons employed to convey him thither, be sooner paid and satisfied.*

Given under our hands and seals, at ——, *in the county of* ——, *this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——.

(*a*) or *city, borough*, or other place.

(*e*) or *refusing*.

(*f*) Insert "*in custody of the said constable*;" or "*according to the exigency of a recognizance duly entered into by him on the* —— *day of* —— *last*."

(*g*) or *house of correction*.

(*h*) Not to exceed three calendar months.

(*i*) Where warrants are issued after the passing of this act, the justices should insert the amount of these costs and charges.

The following may be the form of the commitment, where the putative father admits that there is no distress :—

Commitment, on admission that there is no Distress.

} *To the constable of* ——, *in the* county (*a*) *of* ——,
to wit. } *and to the keeper of the* (*b*) common gaol *at* ——, *in the county of* ——.

Whereas information and complaint were, on the —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *made upon* oath (*c*) *before* ——, *one of Her Majesty's justices of the peace for the said* county (*a*), *by* ——, *of the parish of* ——, *in the* county (*a*) *of* ——, *single woman, that by an order made under the authority of the statute passed in the eighth year of the reign of Her present Majesty, intituled "An Act for the further amendment of the Laws relating to the Poor in England," at the petty session holden in and for the* division (*a*) of ——, in the county *of* ——, *on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *by Her Majesty's justices of the peace for the said* county (*a*) *acting in and for the said* division (*a*) —— *then and there assembled,* —— *of* —— *in the* county (*a*) *of* —— *was adjudged to be the putative father of a bastard child, then lately born of her body; and that in and by the said order it was ordered that the said* —— *should pay to her, the said* ——, *so long as she should live and should be of sound mind, and should not be in any gaol or prison, or under sentence of transportation, or to such person as might be appointed to have the custody of such bastard child, under the provisions of the said statute,* the sum of —— per week for the first six weeks from the birth of the said child, and from the expiration of such six weeks *the sum of* —— *per week* ——, *until such child should attain the age of thirteen years, or should die, or that she the said mother should marry,* and the sum of ten shillings for the midwife, and the sum of —— for the costs incurred in obtaining such order; *and that the said* —— *had had due notice of the said order, and that the said bastard child was then living, under the age of thirteen years, and that she the said mother had not been married since the said order was made, and that the payments directed to be made by the said order had not been made according thereto by the said* ——, *and that there was then in arrear for the same the sum of* ——, *being the amount of arrears for* —— *weeks' payments,* and ten shillings for the midwife, and the sum of —— for costs incurred in obtaining such order.

And whereas the said justice, by warrant under his hand and seal, directed to the constable of the said parish of ——, *and all Her Majesty's officers of the peace in and for the said* county (*a*),

(*a*) or *city, borough,* or other place.

(*b*) or *house of correction.*

(*c*) or *affirmation.*

commanded him forthwith to apprehend the said ——, *and to convey him before two of Her Majesty's justices of the peace in and for the said* county (*a*) ——, *to answer the premises, and be dealt with according to law.*

Whereupon the said ——, *being now brought before us, two of Her Majesty's justices of the peace for the said* county (*a*) ——, *to show cause why the same should not be paid, hath not shown any cause why the same should not be paid; and the same duly appearing upon* oath (*c*) *to be due from the said* —— *under the said order, together with the further sum of* —— *for the costs attending such warrant, apprehension, and bringing up of him, the said* ——, *nevertheless* neglects (*e*) *to make payment of the said sums due under the said order, and the said sums so due for such costs.*

And whereas it appears to us, upon the admission of the said ——, *that no sufficient distress can be had upon his goods and chattels for the recovery of the said several sums:*

These are therefore to command you, the said constable of ——, *to convey the said* —— *to the said* common gaol (*f*) *at* ——, *and these are also to command you the said keeper of the said* common gaol (*f*) *to receive the said* —— *into the said* common gaol (*f*), *there to remain without bail or mainprize for the term of* (*g*) ——, *unless such sum and costs, together with* (*h*) *the cost and charges attending the commitment and conveying of the said* —— *to the said* common gaol (*f*), *and of the persons employed to convey him thither, be sooner paid and satisfied.*

Given under our hands and seals at ——, *in the county of* ——, *this* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——.

(*a*) or *city, borough,* or other place.
(*c*) or *affirmation.*
(*e*) or *refuses.*
(*f*) or *house of correction.*
(*g*) Not to exceed three calendar months.
(*h*) Where warrants are issued after the passing of this act, the justices should insert the amount of these costs and charges.

4. *Appeal.*

If within twenty-four hours after the adjudication and making of any order on the putative father as aforesaid, such putative father give notice of appeal to the mother of the bastard child, and also within seven days give sufficient security, by recognizance or otherwise, to the satisfaction of some one justice of the peace, [conditioned for the appearance of the putative father at the general quarter sessions of the peace, his trial of the appeal thereat, and the payment of such costs as he shall be then and there ordered to pay: 8 & 9 *Vict. c.* 10, *s.* 3:] it shall be lawful for such putative father to appeal to

the general quarter sessions of the peace to be holden after the period of fourteen days next after the making of the said order for the county, city, borough, or place for which such petty sessions may have been held; and the justices in such quarter sessions assembled, or the recorder, as the case may be, shall thereupon hear and determine such appeal, and shall order such costs to be paid by either party as to them or him may seem fit. 7 & 8 *Vict. c.* 101, *s.* 4.

And the party thus entering into recognizance, shall forthwith give or send a notice in writing of his having so entered into such recognizance to the woman in whose favour the said order shall have been made, and, (unless he shall enter into the recognizance before one of the justices who shall have made the order,) to one at least of such justices; and in default of his giving or sending such notice or notices as aforesaid, the appeal shall not be allowed; provided that the sending of such notice or notices by the post shall be taken to be sufficient. 8 & 9 *Vict. c.* 10, *s.* 3.

As the time here limited for giving notice of appeal is very short, and it may possibly be difficult to find the woman or her residence, when it may be necessary to serve it, it may be prudent for the putative father to be prepared with a notice of appeal, when he attends at the petty sessions; and if the justices there then decide against him and make an order, he may immediately give the notice to the mother, who will be present upon the occasion.

The following may be the form of the notice of appeal:—

Berks: To ——

This is to give you notice, that I, John Nokes, do intend [*at the next general quarter sessions of the peace to be holden in and for the said county of Berks, at* ——, *in the said county,*] *to appeal against a certain order of* —— *one of Her Majesty's justices of the peace of and for the said county, made on* —— or *this day, at the petty sessions holden for the petty sessional division of* ——, *in the said county, whereby amongst other things they adjudicate that I am the father of the bastard child of which you have been lately delivered, and they therein order me to pay to you certain sums of money, as therein is particularly mentioned. Dated this* —— *day of* ——, *in the year of our Lord* ——.

Or if the next sessions will commence within fifteen days from the making of the order, then, instead of the words within the brackets, say, "*at the general quarter sessions to be holden in and for the said county of Berks, at* ——, *in the said county, next after the period of fourteen days from the making of the order herein mentioned.*"

The following may be the form of the recognizance :—

Recognizance.

to wit. } *Whereas by an order under the hands and seals of* ——, *assembled at a petty session of Her Majesty's justices of the peace for the* (*a*) county *of* ——, *holden in and for the* (*a*) division of ——, in the said county, *at* ——, *on* ——, *the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *the said* —— *was adjudged to be the putative father of a bastard child, of which one* —— *had been then lately delivered, and was ordered to pay to her certain sums of money therein set forth: and whereas the said* —— *hath given to the said* —— *notice of his intention to appeal against the said order to the general quarter session of the peace, to be holden* (*b*) *on* ——, *the* —— *day of* —— *next, for the county of* ——.

Now the condition of this recognizance is such, that if the above-named —— *do appear at the general quarter session of the peace, to be held at* ——, *in and for the* (*a*) county *of* ——, *on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *and then and there try such appeal, and pay such costs as shall be by the said court awarded, then this recognizance to be void.*

Taken and acknowledged this —— *day of* ——, *in the year of our Lord one thousand eight hundred and forty* ——, *at* ——, *in the* county of (*a*) ——, *before me, the undersigned, one of Her Majesty's justices of the peace for the said* county. (*a*)

(*a*) or *city*, *borough*, or other place.

(*b*) If the notice of appeal do not set out the day on which the quarter session is to be holden, this recita and the condition must be altered accordingly.

By stat. 8 & 9 Vict. c. 10, s. 6, the mother is rendered a competent witness upon the hearing of the appeal; but the court of quarter sessions shall not confirm the order appealed against "unless the evidence of the said mother shall have been corroborated in some material particular by other testimony, to the satisfaction of the said justices in quarter sessions assembled, or the recorder."

"If at any time before the hearing of the appeal the putative father, who shall have entered into any such recognizance, shall give notice in writing of his abandonment of the appeal, to the mother of the child in whose favour the order shall have been made, and to the justice or justices before whom the said recognizance shall have been taken, and shall pay or tender to the said mother all sums then due under the said order,

and such costs and expenses as she shall have incurred by reason of such notice of appeal, the said recognizance so entered into by the said putative father shall not be estreated, nor in any manner put in force or otherwise proceeded with." *Id. s.* 5.

5. *Punishment of the Mother.*

Every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby such child becomes chargeable to any parish or union, shall be punishable as an idle and disorderly person, under the provisions of an Act made and passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled *An Act for the punishment of idle and disorderly persons, and rogues and vagabonds, in that part of the united kingdom callled England*; and every woman so neglecting to maintain her bastard child, after having been once before convicted of such offence, and every woman deserting her bastard child, whereby such bastard child becomes chargeable to any parish or union, shall be punishable as a rogue and vagabond, under the provisions of the said last-recited Act. 7 & 8 *Vict. c.* 101, *s.* 6.

6. *Improperly promoting Marriage between the Parties.*

If any officer of a union, parish, or place endeavour to induce any person to contract a marriage by threat or promise respecting any application to be made or any order to be enforced with respect to the maintenance of any bastard child, such officer shall be guilty of a misdemeanor. *Id. s.* 8.

BAWDY-HOUSE.

See "Disorderly House."

BEASTIALITY.

See "Unnatural Practices."

BIGAMY.

"If any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or elsewhere:" felony, transportation for seven years, or imprisonment, with or without hard labour, for not more than two years. 9 *G.* 4, *c.* 31, *s.* 22. But, by the same section, the act shall not extend to a second marriage out of England by any but a British subject; nor to a person marrying a second time, "whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time;" [*see R.* v. *Jones*, 1 *Car.* & *M.* 614. *R.* v. *Cullen*, 9 *Car.* & *P.* 681;] nor to a person who, at the time of the second marriage, shall be divorced from the bond of the first marriage, nor to a person whose former marriage shall have been declared void by the sentence of a court of competent jurisdiction. *Id. s.* 22.

The offender may be tried, &c. in the county in which he is apprehended or is in custody. *Id. s.* 22.

In order to sustain this charge, the prosecutor must prove the two marriages. These may be proved by any person who was present, and can identify the parties, or by producing and proving an examined copy of the registry of the marriage, and giving satisfactory proof of identity; and this evidence will be sufficient, without proof of any licence or publication of banns. *R.* v. *Allison alias Wilkinson*, *R.* & *Ry.* 109. If either marriage were in a foreign country, proof that it was solemnized in the manner usual in that country, will be good presumptive proof that it was a valid marriage. *Lacon* v. *Higgins*, 3 *Stark.* 178; *see R.* v. *Dent*, 1 *Car.* & *K.* 97. It may be necessary to mention that since the Marriage Act, 4 G. 4, c. 76, a marriage, by licence, of persons under age, without the consent of parents, is not void, the 16th section of that act upon the subject being merely directory; *R.* v. *Birmingham*, 8 *B.* & *C.* 29; also, that a marriage by banns in a false name, is not a nullity, unless it be proved that both parties had a knowledge of it; *R.* v. *Wroxton*, 4 *B.* & *Ad.* 640; nor can it be objected to by the party who caused the false name to be used; *R.* v. *Allison alias Wilkinson*, *supra*. *R.* v. *Edwards*, *R.* & *Ry.* 283; nor will it be any objection that at the time of the marriage by banns, the parties did not reside in the parish. *R.* v. *Hind*, *R.* & *Ry.* 253. The prosecutor must also prove that at the time of the second marriage, the first wife or husband was alive. It may be necessary to mention that the first wife or husband cannot be a witness; the second may.

Commitment: *On* ——, *at* ——, *feloniously did marry and take to wife, one E. F., C. B. his former wife, to whom the said A. B. was previously married, being then alive; against the form of the statute in such case made and provided. And you the said keeper*, &c.

BLASPHEMY AND PROFANENESS.

Blasphemies against God, such as denying his being or providence, and all contumelious reproaches of Christ, being offences tending to subvert religion and morality, are indictable as misdemeanors at common law, and punishable with fine or imprisonment, or both. 1 *Hawk. c.* 5, *ss.* 1, 5. *See R.* v. *Taylor*, 1 *Vent.* 293. *Woolston's case*, 2 *Str.* 834, *Fitzg.* 64. *R.* v. *Annet*, 1 *W. Bl.* 395.

In the same manner, all profane scoffing at the holy Scripture, or exposing any part of it to contempt or ridicule, being an offence of the same tendency, is likewise a misdemeanor, and similarly punishable. 1 *Hawk. c.* 5, *ss.* 2, 5.

So, speaking or writing against Christianity, or even against the established religion (excepting the disputes of learned men upon particular controverted points, *Per Cur. in R.* v. *Woolston, supra,*) is a misdemeanor at common law, punishable in the like manner. *See R.* v. *Thomas Paine*, 1 *East, P. C.* 5. *R.* v. *Hall*, 1 *Str.* 416.

Commitment for a blasphemous libel:—*On* ——, *at* ——, *unlawfully and wilfully did compose, print, and publish a certain scandalous, impious, blasphemous and profane libel,* [*of and concerning the holy Scriptures, and the Christian religion.*] *And you the said keeper*, &c.

BREAD AND FLOUR.

1. *Regulations within the bills of mortality*, p. 206.
2. *Regulations beyond the bills of mortality*, p. 219.

1. *Regulations within the Bills of Mortality.*

Bread, of what materials, p. 207.
Adulterating bread, p. 208.

Adulterating flour, &c. p. 208.
Search for adulterated bread or flour, p. 209.
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Bread, of what materials.] "Bakers or sellers of bread within the city of *London* and the liberties thereof, within the weekly bills of mortality, and within ten miles of the *Royal Exchange*, may make and sell in their shops, or deliver to their customers, bread made of flour or meal of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice, or potatoes, or any of them, and with any common salt, pure water, eggs, milk, balm, leaven, potatoe or other yeast, and mixed in such proportions as they shall think fit, and with no other ingredient or matter whatsoever, subject to the regulations hereinafter contained." 3 *G.* 4, *c.* cvi. *s.* 2.

But bakers, making bread wholly or partially of the meal or flour of any other sort of corn or grain than wheat, or of the meal or flour of any peas or beans, shall cause all such bread to be marked with a large roman M; "and if any person shall at any time, within the limits aforesaid, make or sell, or expose for sale, any such bread without such mark as herein-before directed, then and in every such case every person so offending shall, upon conviction in manner hereinafter mentioned, forfeit and pay for every pound weight of such bread, and so in proportion for any less quantity, which shall be so made for sale, or sold or exposed for sale, without being so marked as aforesaid, any sum not exceeding 10*s.*, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge." *Id. s.* 12.

Conviction as *post*, p. 215, describing the offence thus: *For that he the said A. B. on ——, at ——, being then and there a baker, then and there within the weekly bills of mortality* [or *within the city of London*, or *within ten miles of the Royal Ex-*

change]* *did expose for sale certain bread, to wit, ten loaves of bread of the weight of forty pounds, made partly of rye meal, the said loaves and each and every of them not being then and there marked with the letter M; against the form of the statute in such case made and provided. And I do adjudge him to pay and forfeit for the same the sum of —— per pound, being in the whole the sum of ——. Given,* &c.

Adulterating bread.] "No baker or other person or persons who shall make bread for sale within the limits aforesaid, nor any journeyman or other servant of any such baker or other person, shall at any time or times, in the making of bread for sale within such limits, use any mixture or ingredient whatsoever in the making of such bread, other than and except as hereinbefore mentioned, on any account or under any colour or pretext whatsoever;" penalty, not exceeding 10*l.*, nor less than 5*l.*, or in default thereof, the justice before whom such offender shall be convicted may cause him to be apprehended and committed to the house of correction or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment, unless the penalty shall be sooner paid; and the justice may cause the offender's name, place of abode, and offence to be published in some newspaper, published in or near the city of *London*, or the liberty of *Westminster*, and defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid or recovered. *Id.* s. 10.

Conviction same as the form *ante*, p. 207, to the asterisk,* and then thus:—*did use a certain ingredient called ——, in certain bread which he the said A. B. then and there made for sale, against the form of the statute in such case made and provided. And I do adjudge,* &c.

Adulterating flour, &c.] "If any person within the limits aforesaid shall put into any corn, meal or flour, which shall be ground, dressed, bolted, or manufactured for sale within such limits, either at the time of grinding, dressing, bolting, or manufacturing the same, or at any other time, any ingredient or mixture whatsoever, not being the real and genuine produce of the corn or grain which shall be so ground; or if any person shall, within the limits aforesaid, knowingly sell, or offer or expose for sale, either separately or mixed, any meal or flour of one sort of corn or grain as the meal or flour of any other sort of corn or grain, or any ingredient whatsoever mixed with the meal or flour so sold or offered or exposed for sale:" penalty not exceeding 20*l.* nor less than 5*l.* *Id. s.* 11.

Conviction as *post*, p. 215. *For that he the said A. B., on* ——, *at* ——, *within the weekly bills of mortality,* [*or within the city of London*, or *within ten miles of the Royal Exchange,*] *did expose for sale certain flour, with a certain ingredient called* —— *mixed therewith* [or as the case may be,] *the said* —— *not being the real or genuine produce of the corn from which the said flour was ground: against the form of the statute in such case made and provided. And I do adjudge,* &c.

Search for adulterated bread or flour.] Any justice of the peace, within the limits of his jurisdiction, and any peace officer authorized by warrant under the hand and seal of any such justice, at seasonable times in the day-time, may enter into "any house, mill, shop, stall, bakehouse, bolting-house, pastry warehouse, out-house, or ground of or belonging to any miller, mealman, or baker, or other person who shall grind grain, or dress or bolt meal or flour, or make bread for reward or sale, within the limits aforesaid," and may "search or examine whether any mixture or ingredient, not the genuine produce of the grain such meal or flour shall import or ought to be, shall have been mixed up with or put into any meal or flour in the possession of such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, whereby the purity of any meal or flour is or shall be in anywise adulterated, or whether any mixture or ingredient, other than is allowed by this Act, shall have been mixed up with or put into any dough or bread in the possession of any such baker or other person, whereby any such dough or bread is or shall be in anywise adulterated, and also to search for any mixture or ingredient which may be intended to be used in or for any such adulteration or mixture:" and if he find any, he may seize the meal, flour, dough, or bread so adulterated, or any such mixture or ingredient as aforesaid; and the same if seized by an officer as aforesaid, shall, with all convenient speed after the seizure, be carried to the nearest resident justice of the peace, within the limits of whose jurisdiction the same shall have been so seized: and if any justice, who shall make any such seizure, or to whom any thing so seized shall be brought, "shall adjudge that any such meal, flour, dough, or bread so seized shall have been adulterated by any mixture or ingredient put therein, other than is allowed by this Act, or shall adjudge that any ingredient or mixture so found as aforesaid shall have been deposited, or kept where so found for the purpose of adulterating meal, flour or bread," he shall dispose of the same as he in his discretion shall think proper. *Id. s.* 13.

Penalty on persons having the same.] "Every miller, mealman, or baker within the limits aforesaid, in whose house,

mill, shop, stall, bakehouse, bolting-house, pastry warehouse, outhouse, ground, or possession any ingredient or mixture shall be found, which shall, after due examination, be adjudged by any magistrate or magistrates, justice or justices of the peace to have been deposited there for the purpose of being used in adulterating meal, flour, or bread," shall, on conviction, forfeit a sum not exceeding ten pounds, nor less than forty shillings for the first offence; five pounds for the second offence, and ten pounds for every subsequent offence; or, in default of payment thereof, shall, by warrant under the hand and seal of the justice before whom he shall be convicted, be apprehended and committed to the house of correction, or some prison of the city, county, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months from the time of such commitment (unless the penalty be sooner paid;) and the justice may cause the offender's name, place of abode, and offence to be published in some newspaper, published in or near the city of *London*, and defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered. *Id. s.* 14.

Conviction as *ante*, p. 207, to the asterisk,* and then thus: *did have in his bakehouse there a certain ingredient called* ——, *and which, after due examination, I hereby adjudge to have been deposited there for the purpose of being used in adulterating bread,* [or as the case may be;] *against the form of the statute in such case made and provided. And I do adjudge*, &c.

Obstructing the search.] "If any person or persons shall wilfully obstruct or hinder any such search as hereinbefore is authorized to be made, or the seizure of any meal, flour, dough, or bread, or of any ingredient or mixture which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour, dough, or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredient or mixture as aforesaid, or any meal, flour, dough, or bread which shall be seized as being adulterated, or as not being made pursuant to this Act:" he shall forfeit, on conviction, a "sum not exceeding ten pounds." *Id. s.* 15.

Conviction, same as *ante*, p. 207, to the asterisk,* and then thus: *did obstruct and hinder one C. D. in making search in the bakehouse of him the said A. B., for mixtures and ingredients, other than are allowed by the statute in such case made and provided, and which then and there were intended for the adulteration of bread,* [or as the case may be, see s. 13, *ante*, pp. 209:]

against the form of the statute in such case made and provided. And I do adjudge, &c.

Bread to be sold by weight.] Bakers or sellers of bread within the limits aforesaid, may make and sell, or deliver to their customers, bread made of such weight or size as such bakers or sellers of bread shall think fit. *Id. s.* 3. And all bread sold within the limits aforesaid shall be sold by weight; "and in case any baker or seller of bread within the limits aforesaid, shall sell or cause to be sold bread in any other manner than by weight;" penalty not exceeding forty shillings. But this is not to extend to prevent or hinder a baker or seller of bread from selling bread usually sold under the denomination of French or fancy bread, or rolls, without previously weighing the same. *Id. s.* 4.

Conviction as *ante*, p. 207, to the asterisk,* and then thus: *did sell to one C. D. a certain loaf of bread, otherwise than by weight, that is to say, for the sum of —— for the said loaf, the said loaf not being then and there such bread as is usually sold under the denomination of French or fancy bread, or rolls; against the form of the statute in such case made and provided. And I do adjudge, &c.*

Not using avoirdupoise weight.] Bakers or sellers of bread within the said limits, in the sale of bread, shall use the avoirdupoise weight of sixteen ounces to the pound, according to the standard in the Exchequer, and the several gradations of the same for any less quantity than a pound; "and in case any such baker or seller of bread shall at any time use any other than the avoirdupoise weight, and the several gradations of the same, he, she, or they shall for every such offence, forfeit and pay any sum not exceeding five pounds, nor less than forty shillings." *Id. s.* 5.

Conviction same as *ante*, p. 207, to the asterisk,* and then thus: *did sell to one C D. a certain loaf of bread by weight, other than the avoirdupoise weight of* 16 *ounces to the pound, according to the standard in the Exchequer, to wit, by a weight of* 14 *ounces to the pound only; against the form of the statute in such case made and provided. And I do adjudge, &c.*

Not providing scales and weights, &c.] Every baker or seller of bread within the limits aforesaid shall cause to be fixed in some conspicuous part of his shop, on or near the counter, a beam and scales with proper weights, or other sufficient balance, in order that all bread there sold may from time to time be weighed in the presence of the purchaser thereof, except as aforesaid; "and in case any such baker or seller of bread

shall neglect to fix such beam and scales, or other sufficient balance, in manner aforesaid, or to provide and keep for use proper beam and scales and proper weights or balance, or shall have or use any incorrect or false beam or scales or balance, or any false weight, not being of the weight it purports to be according to the standard in the Exchequer:" then and in every such case he shall, for every such false beam and scales and balance, or false weight, forfeit and pay any sum not exceeding five pounds. *Id. s.* 8.

Conviction as *ante*, p. 207, to the asterisk,* and then thus: *did not fix or cause to be fixed in his shop there any beam and scales, or other sufficient balance, and did not then and there provide and keep for use proper beam and scales or balance,* [or as the case may be;] *against the form of the statute in such case made and provided. And I do adjudge,* &c.

And every baker or seller of bread within the limits aforesaid, and every journeyman, servant, or other person employed by such baker or seller of bread, who shall convey or carry out bread for sale in any cart or other carriage drawn by a horse, mule, or ass, shall be provided with and shall constantly carry in such cart or other carriage, a correct beam and scales with proper weights, or other sufficient balance, in order that all bread sold by every such baker, &c. may from time to time be weighed in the presence of the purchaser thereof, except as aforesaid; "and in case any such baker or seller of bread, or his or her journeyman, servant, or other person, shall at any time carry out or deliver any bread, without being provided with such beam and scales, with proper weights, or other sufficient balance, or whose weights shall be deficient in their due weight, according to the standard in the Exchequer, or shall at any time refuse to weigh any bread purchased of him, her, or them, or delivered by his, her, or their journeyman, servant, or other person, in the presence of the person or persons purchasing or receiving the same;" penalty, not exceeding five pounds. *Id. s.* 9. The conviction on this section may readily be framed from the last form.

Baking, &c. on Sunday.] "No master, mistress, journeyman, or other person respectively, exercised or employed in the trade or calling of a baker, within the limits aforesaid, shall, on the Lord's day, or on any part thereof, make or bake any bread, rolls, or cakes of any sort or kind; or shall, on any other part of the said day than between the hours of nine of the clock in the forenoon, and one of the clock in the afternoon, on any pretence whatsoever, sell, or expose to sale, or permit or suffer to be sold or exposed to sale, any bread, rolls, or cakes of any sort or kind, or bake or deliver, or permit or

suffer to be baked or delivered any meat, pudding, pie, tart, or victuals, except as hereinafter is excepted; or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof, save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following day's baking:" penalty, on conviction of the offence, within six days from the commission thereof, for the first offence, ten shillings; for the second offence, twenty shillings; and for the third and every subsequent offence, forty shillings; and shall moreover, upon every such conviction, bear and pay the costs and expenses of the prosecution, to be settled and ascertained by the justice convicting; and the amount thereof, together with such part of the penalty as such justice shall think proper, to be allowed and paid to the prosecutor for loss of time in instituting and following up the prosecution, at a rate not exceeding three shillings *per diem*; and the residue of such penalty to be paid to such justice, and by him, within seven days after his receipt thereof, to be transmitted to the churchwardens or overseers of the parish or parishes where the offence shall be committed, to be applied for the benefit of the poor thereof: and if the penalty, &c. be not forthwith paid after conviction, such justice shall, by warrant under his hand and seal, direct the same to be raised and levied by distress and sale of the goods and chattels of the offender, and, in default or insufficiency of such distress, commit the offender to the house of correction, on a first offence, for seven days,—for a second offence, for fourteen days,—and on a third or any subsequent offence, for one month,—unless the whole of the penalty, costs, and expenses be sooner paid and discharged: provided, nevertheless, that it shall be lawful for every master baker, residing within the limits aforesaid, to deliver to his customers, on the Lord's day, any bakings, until half an hour past one of the clock in the afternoon of that day, without incurring or being liable to any of the penalties in this act contained. *Id. s.* 16.

Conviction: *For that he, the said A. B., on the Lord's day, commonly called Sunday, to wit, on* ——, *at* ——, [&c. as *ante*, p. 207, to the asterisk*] *did bake* —— *loaves of bread* [or as the case may be;] *against the form of the statute in such case made and provided. And I do adjudge*, &c.

Opposing the execution of this act.] "In case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this Act," penalty not exceeding ten pounds. *Id. s.* 18. The conviction in this case must describe the offence specially.

Offences by journeymen.] If any person, making bread for sale within the limits aforesaid, shall at any time make complaint to a justice of the peace, and make appear to him by the oath or affirmation of any credible witness, that any offence which such person shall have been charged with, and for which he shall have incurred and paid any penalty under this Act, shall have been occasioned by or through the wilful act, neglect, or default of any journeyman or other servant employed by or under him, the justice shall issue his warrant for bringing such journeyman or servant before him or any justice of the peace acting in and for the city, county, division, or place where the offender can be found; and on any such journeyman or servant being thereupon apprehended and brought before any such justice, he shall examine into the matter of such complaint, and on proof thereof upon oath or affirmation to the satisfaction of any such justice, such justice, by order under his hand, shall adjudge and order what reasonable sum of money shall be paid by such journeyman or servant to his master, as or by way of recompence to him for the money he shall have paid by reason of the wilful act, neglect, or default of any such journeyman or servant; and if any such journeyman or servant shall neglect or refuse, on his conviction, to make immediate payment of such sum of money, such justice shall, by warrant under his hand and seal, cause such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the city, county, division, or place, in which such journeyman or servant shall be apprehended or convicted, to be there kept to hard labour for any term not exceeding six calendar months, unless payment of the money shall be sooner made. *Id. s.* 15.

The order in this case must be special, reciting the conviction of the master, his complaint against the journeyman, the appearance of the latter, and hearing of the complaint, the order for the money, &c.

☞ *Proceedings for penalties.*] One justice of the peace may hear and determine the offences against this act. *Id. s.* 19. The complaint shall be made in a summary way to the magistrate usually acting for the district in which the offence shall have been committed, who thereupon may issue his summons. *Id. s.* 22. The complaint must be made within forty-eight hours after the offence committed. *Id. s.* 31; *but see sect.* 16, *ante*, p. 213. It is provided, however, by sect. 17, that no person, who shall follow or be concerned in the business of a miller, mealman, or baker, shall be capable of acting, or shall be allowed to act, as a justice of the peace under this Act, or in putting in execution any of the powers in or by this act granted: and if any miller, mealman, or baker shall presume

so to do, he shall, for every such offence, forfeit and pay the sum of one hundred pounds to any person who will sue for the same in any of His Majesty's courts of record at *Westminster*.

The summons to be served on every offender against this act, shall, by sect. 20, be in the form or to the effect following:—

To A. B. of
County of ——
(to wit.) } *WHEREAS complaint and information hath been made before me, C. D. one of Her Majesty's justices of the peace*, or *magistrate, for the said* [*county*, &c.] *by E. F. of* ——. *That*, &c. [here state the nature and circumstances of the case, as far as it shall be necessary to show the offence, and to bring it within the authority of the justice or magistrate, and in doing that, follow the words of the Act as near as may be]: *These are therefore to require you personally to appear before me* [or *such other justice or magistrate as shall be then and there present*] *at* —— *in the said* [*county*, &c.] *on the* —— *day of* —— *next, at the hour of* —— *in the* —— *noon, to answer to the said complaint and information made by the said E. F., who is likewise directed to be then and there present to make good the same. Herein fail not. Given under my hand this* —— *day of* ——

The information shall (by sect. 21) be in the form or to the effect following:—

County of } *BE it remembered that on the* —— *day of* ——,
—— *to wit.* } *A. B. of* —— *in the said county, informeth me* —— *one of Her Majesty's justices of the peace* [or *magistrate*, as the case may be] *for the said county, that* —— *of* ——, *in the said county* [here describe the offence, with the time and place, and follow the words of the Act as near as may be], *contrary to the statute made in the third year of the reign of King George the Fourth, intituled "An Act to repeal the Acts now in force relating to bread to be sold in the city of London and the liberties thereof, and within the weekly bills of mortality, and ten miles of the Royal Exchange, and to provide other regulations for the making and sale of bread, and preventing the adulteration of meal, flour, and bread within the limits aforesaid," which hath imposed a forfeiture of* —— *for the said offence. Taken the* —— *day of* ——, *before me, A. B.*

The conviction (by sect. 25) may be drawn up in the form or to the effect following: (that is to say,)

—— } *BE it remembered, that on this* —— *day of* ——
to wit. } *in the* —— *year of the reign of* ——, *A. B. is convicted before* —— *Majesty's justices of the peace for the said*

county of —— [or *for the* —— *division of the said county of* —— [or *for the city, liberty,* or *town of* ——, [as the case shall happen to be] ——, *for* ——; *and* —— *do adjudge him* [or *her* or *them*, as the case may be] *to pay and forfeit for the same the sum of* ——.

Given under ——, *the day and year aforesaid.*

The blank here after the word "for," seems to be left for the description of the offence.

No order, judgment, or conviction, made touching or concerning any of the matters in this Act contained, or of any proceedings to be had touching the conviction of any offender or offenders against this act, shall be quashed for want of form, or be removed or removable by certiorari. *Id. s.* 26.

Witnesses.] If it shall be made appear, by the oath or affirmation of any credible person, that any person within the jurisdiction of any justice is likely to give material evidence on behalf of the prosecutor or the person accused, and will not voluntarily appear before such justice to be examined, such justice shall issue his summons to convene every such person or persons before any such justice at such seasonable time as in such summons shall be fixed; and if any person so summoned, after having been paid or tendered a reasonable sum for his costs and expenses, shall neglect or refuse to appear at the time by such summons appointed, and no just excuse shall be offered for such neglect or refusal, then (after proof upon oath or affirmation of such summons having been duly served upon the party or parties so summoned) every such justice shall issue his warrant, under his hand and seal, to bring such person before any such justice; and on the appearance of any such person before any such justice, every such justice shall examine him on oath or affirmation; and if on his appearance, or on being brought before any such justice, he shall refuse to be examined upon oath or affirmation concerning the premises, without offering any just excuse for such refusal, any such justice, within the limits of his jurisdiction, may, by warrant under his hand and seal, commit the person so refusing to the public prison of the city, county, division, liberty, or place in which the person so refusing to be examined shall be, there to remain for any time not exceeding fourteen days. *Id. s.* 23.

Penalties, how levied and applied.] All penalties by this Act imposed (the manner of levying, and recovering, and applying whereof is not herein otherwise directed,) shall be levied, together with the costs attending the information and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand and seal of the convicting

magistrate; and in case such penalties shall not be forthwith paid upon conviction, then it shall be lawful for such magistrate to order the offender to be detained in custody, until return can be conveniently made to such warrant of distress, unless the offender shall give sufficient security for his appearance on such day as shall be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security; but if upon the return of such warrant, it shall appear that no sufficient distress can be had, then such magistrate shall by warrant under his hand and seal cause such offender to be committed to the common gaol or house of correction of the city, county, or place where the offender shall be or reside, there to remain without bail or mainprize for any time not exceeding one calendar month (save and except as herein otherwise directed), unless such penalties, and all reasonable charges attending the same, shall be sooner paid and satisfied. *Id. s.* 19.

And all penalties by this act inflicted, and the application of which is not hereinbefore directed, shall, when recovered or paid, go and be disposed of in manner following: that is to say, one moiety thereof, where any offender shall be convicted, either by his confession, or by the oath or affirmation of one or more credible witness or witnesses, shall go and be paid to the person who shall inform against and prosecute to conviction any such offender; and the other moiety thereof, or in case there be no such person informing, then the whole thereof shall go and be paid to the churchwardens and overseers of the poor of the parish for the use of the poor in the parish wherein such offence shall be committed, in such manner as such churchwardens and overseers of the poor shall in their discretion think fit. *Id. s.* 32.

Where any distress shall be made for any sum or sums of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the summons, conviction, warrant of distress, or any other proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio* on account of any irregularity which shall be afterwards committed by the party or parties distraining, but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage, if any, in an action on the case; but no plaintiff or plaintiffs shall recover in any action for such irregularity as aforesaid, if tender of sufficient amends hath been made by or on behalf of the party distraining before such action brought. *Id. s.* 26.

Appeal.] If any person convicted of any offence punishable by this Act, shall think himself aggrieved thereby, he

may appeal to the justices at the next general or general quarter sessions of the peace which shall be held for the city, county, division, liberty, town, or place where such judgment shall have been given; and the execution of such judgment shall in such case be suspended, the person so convicted entering into a recognizance within twenty-four hours of the time of such conviction, with two sufficient sureties, in double the sum he is adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or general quarter sessions; which recognizance the justice, before whom such conviction shall be had, is hereby empowered and required to take; and if upon hearing the said appeal, the judgment of the justice shall be confirmed, such appellant shall forthwith pay down the sum he shall have been adjudged to have forfeited, together with such costs as the said justices at sessions shall award to be paid to the prosecutor or informer; and in default of the appellant's paying the same, any two justices, or any one justice of the peace having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she, or they shall reside, shall commit such appellant to the common gaol of the city, county, division, or place where he shall be apprehended, until he shall make payment of such penalty, and of the costs and charges which shall be adjudged on the conviction; but if the appellant in any such appeal shall make good his appeal, and be discharged of the said conviction, reasonable costs shall be awarded to him against such informer, who would (in case of such conviction) have been entitled to a moiety of the penalty, to have been recovered as aforesaid, and which costs shall and may be recovered by the appellant against any such informer, in like manner as costs given at any general or general quarter sessions are recoverable: provided always, that no person shall be detained in prison for any such offence for any greater length of time than three calendar months. *Id. s.* 27.

If any such conviction shall be made within six days before the next sessions, the party may appeal either to the then next, or next following, general or general quarter sessions. *Id. s.* 28.

Actions against justices, &c.] The Act contains the usual clauses, as to the limitation of action, pleading the general issue, costs, &c. in actions against justices or officers, for any thing done under or by virtue of the Act. *Id. ss.* 29, 30.

Saving of rights, &c.] The Act also contains a saving of the rights and privileges of the city of *London*, and of the worshipful company of bakers of the said city, and of the wardmote-

inquests of the said city, and of the city or liberties of *Westminster*, and borough of *Southwark*, and any right or custom of any lord or lords of any leets, and the rights of any clerk or clerks of the market, in any place, which may be exercised and enjoyed by them or any of them by virtue of any charters, by-laws, prescriptions, usages, customs, privileges, grants, or acts of parliament. *Id. s.* 33.

2. *Regulations beyond the Bills of Mortality.*

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Actions against justices, &c. p. 229.
Saving of rights, &c. p. 229.

Bread, of what materials.] Bakers or sellers of bread, out of the city of *London* and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the *Royal Exchange*, may make and sell in their shops, or deliver to their customers, bread made of flour or meal of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice, or potatoes, or any of them, and with any common salt, pure water, eggs, milk, barm, leaven, potatoe or other yeast, and mixed in such proportions as they shall think fit, and with no other ingredient or matter whatsoever, subject to the regulations hereinafter contained. 6 & 7 *W.* 4, *c.* 37, *s.* 2. But bakers making bread wholly or partially of peas or beans, or potatoes, or of any sort of corn or grain, other than wheat, shall cause all such bread to be marked with a large roman M; "and if any person shall at any time, beyond the limits aforesaid, make or sell or expose for sale any such bread, without such mark as hereinbefore

directed, then and in every such case every person so offending shall, upon conviction in manner hereinafter mentioned, forfeit and pay for every pound weight of such bread, and so in proportion for any less quantity which shall be so made for sale, or sold or exposed for sale, without being so marked as aforesaid, any sum not exceeding ten shillings, as the magistrate or magistrates, justice or justices, before whom such conviction shall take place, shall from time to time order and adjudge: provided always, that nothing in this Act contained shall extend or be construed to extend to require any bread made of the meal or flour of wheat only, and in the making of which potatoe yeast shall be used, to be marked as hereinbefore is mentioned." *Id. s.* 20.

Conviction the same as *ante*, p. 207, except that instead of "*within the weekly bills of mortality*," write "*beyond the weekly bills of mortality, and ten miles of the Royal Exchange.*"

Adulterating bread.] "No baker or other person or persons who shall make bread for sale beyond the limits aforesaid, nor any journeyman or other servant of any such baker or other person, shall at any time or times, in the making of bread for sale beyond such limits, use any mixture or ingredient whatsoever in the making of such bread, other than and except as hereinbefore mentioned, on any account or under any colour or pretence whatsoever:" penalty not exceeding ten pounds nor less than five; or in default thereof, the justice before whom such offender shall be convicted, may cause him to be apprehended and committed to the house of correction, or some prison of the city, county, borough, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months, with or without hard labour, from the time of such commitment, unless the penalty shall be sooner paid; and the justice may cause the offender's name, place of abode, and offence, to be published in some newspaper, published in or near the city, county, borough, or place where the offence shall have been committed, and defray the expense of publishing the same out of the money to be forfeited as last-mentioned, in case any shall be so forfeited, paid, or recovered. *Id. s.* 8.

Conviction, same as *ante*, p. 208, with the alteration suggested *supra*.

Adulterating flour, &c.] "If any person beyond the limits aforesaid shall put into any corn, meal, or flour, which shall be ground, dressed, bolted, or manufactured for sale beyond such limits, either at the time of grinding, dressing, bolting, or manufacturing the same, or at any other time, any ingredient or mixture whatsoever, not being the real and genuine produce

of the corn or grain which shall be so ground; or if any person shall beyond the limits aforesaid knowingly sell or offer or expose for sale, either separately or mixed, any meal or flour of one sort of corn or grain, as the meal or flour of any other sort of corn or grain, or any ingredient whatsoever mixed with the meal or flour so sold or offered or exposed for sale:" penalty not exceeding twenty pounds nor less than five. *Id. s.* 9.

Conviction, same as *ante*, p. 209, with the alteration suggested *ante*, p. 220.

Search for adulterated bread or flour.] Any justice of the peace, within the limits of his jurisdiction, and any peace-officer, by warrant under the hand and seal of any such justice, at seasonable times in the daytime, may enter into "any house, mill, shop, stall, bakehouse, bolting-house, pastry warehouse, outhouse, or ground, of or belonging to any miller, mealman, or baker, or other person, who shall grind grain, or dress or bolt meal or flour, or make bread, for reward or sale, beyond the limits aforesaid, and to search or examine whether any mixture or ingredient, not the general produce of the grain of such meal or flour shall import or ought to be, shall have been mixed up with or put into any meal or flour in the possession of such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, whereby the purity of any meal or flour is or shall be in anywise adulterated, or whether any mixture or ingredient other than is allowed by this Act shall have been mixed up with or put into any dough or bread in the possession of any such baker or other person, whereby any such dough or bread is or shall be in anywise adulterated; and also to search for any mixture or ingredient which may be intended to be used in or for any such alteration or mixture;" and if he find any, he may seize the meal, flour, dough, or bread so adulterated, or any such mixture or ingredient as aforesaid; and the same, if seized by an officer as aforesaid, shall, with all convenient speed after seizure, be carried to the nearest resident justice of the peace, within the limits of whose jurisdiction the same shall have been so seized; and if any justice who shall make any such seizure, or to whom any thing so seized shall be brought, shall adjudge that any such meal, flour, dough, or bread so seized, shall have been adulterated by any mixture or ingredient put thereto, other than is allowed by this Act, or shall adjudge that any ingredient or mixture so found as aforesaid shall have been deposited or kept where so found for the purpose of adulterating meal, flour, or bread,"—he shall dispose of the same as he in his discretion shall think proper. *Id. s.* 11.

Penalty on persons having the same.] "Every miller, meal-man, or baker, beyond the limits aforesaid, in whose house, mill, shop, stall, bakehouse, bolting-house, pastry warehouse, outhouse, ground or possession, any ingredient or mixture shall be found, which shall, after due examination, be adjudged by any magistrate or magistrates, justice or justices of the peace, to have been deposited there for the purpose of being used in adulterating meal, flour, or bread," shall, on conviction, forfeit a sum not exceeding ten pounds, nor less than forty shillings for the first offence; five pounds for the second offence, and ten pounds for every subsequent offence; or in default of payment thereof, shall by warrant under the hand and seal of the justice before whom he shall be convicted, be apprehended and committed to the house of correction or some prison of the city, county, or place where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain for any time not exceeding six calendar months, with or without hard labour, from the time of such commitment (unless the penalty be sooner paid); and the justice may cause the offender's name, place of abode, and offence to be published in some newspaper, published in or near the city, county, borough, or place where the offence shall have been committed, and defray the expense of publishing the same out of the money to be forfeited as last mentioned, in case any shall be so forfeited, paid, or recovered. *Id. s.* 12.

Conviction, same as *ante*, p. 210, with the alteration suggested, *ante*, p. 220.

Obstructing the search.] "If any person or persons shall wilfully obstruct or hinder any such search as hereinbefore is authorized to be made, or the seizure of any meal, flour, dough, or bread, or of any ingredient or mixture which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholesomeness of any meal, flour, dough, or bread; or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredient or mixture as aforesaid, or any meal, flour, dough, or bread which shall be seized as being adulterated, or as not being made pursuant to this Act:" he shall forfeit, on conviction, a sum not exceeding ten pounds. *Id. s.* 13.

Conviction, same as *ante*, p. 210, with the alteration suggested *ante*, p. 220.

Bread to be sold by weight.] Bakers or sellers of bread beyond the limits aforesaid, may make and sell, or deliver to their customers, bread made of such weight or size as such bakers or sellers of bread shall think fit. *Id. s.* 3. And all bread sold beyond the limits aforesaid shall be sold by weight; "and in

case any baker or seller of bread beyond the limits aforesaid shall sell or cause to be sold bread in any other manner than by weight," penalty not exceeding forty shillings; but this is not to extend to prevent or hinder a baker or seller of bread, from selling bread usually sold under the denomination of French or fancy bread, or rolls, without previously weighing the same. *Id. s.* 4.

Conviction, same as *ante*, p. 211, with the alteration suggested *ante*, p. 220.

Not using avoirdupoise weight.] Bakers or sellers of bread beyond the said limits, in the sale of bread, shall use avoirdupoise weight of sixteen ounces to the pound, according to the standard in the Exchequer, and the several gradations of the same for any less quantity than a pound; "and in case any such baker or seller of bread shall at any time use any other than the avoirdupoise weight, and the several gradations of the same, he, she, or they shall for every such offence forfeit and pay any sum not exceeding five pounds nor less than forty shillings." *Id. s.* 5.

Conviction, same as *ante*, p. 211, with the alteration suggested *ante*, p. 220.

Not providing scales and weights, &c.] Every baker or seller of bread beyond the limits aforesaid, shall cause to be fixed in some conspicuous part of his shop, on or near the counter, a beam and scales with proper weights, or other sufficient balance, in order that all bread there sold may from time to time be weighed in the presence of the purchaser thereof, except as aforesaid; "and in case any such baker or seller of bread shall neglect to fix such beam and scales, or other sufficient balance, in manner aforesaid, or to provide and keep for use proper beam and scales, and proper weights or balance, or shall have or use any incorrect or false beam or scales and balance, or any false weight, not being of the weight it purports to be, according to the standard in the Exchequer;" then and in every such case he shall, for every such false beam and scales and balance, or false weight, forfeit and pay any sum not exceeding five pounds. *Id. s.* 6.

Conviction, same as *ante*, p. 212, with the alteration suggested *ante*, p. 220.

And every baker or seller of bread beyond the limits aforesaid, and every journeyman, servant, or other person employed by such baker or seller of bread, who shall convey or carry out bread for sale in or from any cart or other carriage, shall be provided with, and shall constantly carry in such cart or other carriage a correct beam and scales with proper weights, or other sufficient balance, in order that all bread sold by every such baker, &c. may from time to time be weighed in the presence

of the purchaser thereof, except as aforesaid: "and in case any such baker or seller of bread, or his or her journeyman, servant, or other person, shall at any time carry out or deliver any bread without being provided with such beam and scales with proper weights or other sufficient balance, or whose weights shall be deficient in their due weight according to the standard in the Exchequer, or shall at any time refuse to weigh any bread purchased of him, her, or them, or delivered by his, her, or their journeymen, servant, or other person, in the presence of the person or persons purchasing or receiving the same," penalty not exceeding five pounds. *Id. s.* 7.

As to the conviction on this section, see *ante*, p. 212.

Baking, &c. on Sunday.] "No master or mistress, journeyman, or other person exercising or employed in the trade or calling of a baker beyond the limits aforesaid, shall on the Lord's-day, or on any part thereof, make or bake any bread, rolls, or cakes of any sort or kind; or shall on any other part of the said day, after the hour of half-past one of the clock in the afternoon, sell or expose for sale, or permit or suffer to be sold or exposed for sale, any bread, rolls, or cakes of any sort or kind, or bake or deliver, or permit or suffer to be baked or delivered any meat, pudding, pie, tart, or victuals, or in any other manner exercise the trade or calling of a baker, or be engaged or employed in the business or occupation thereof,—save and except so far as may be necessary in setting and superintending the sponge to prepare the bread or dough for the following days' baking:" penalty, on conviction of the offence within six days from the commission thereof, for the first offence ten shillings, for the second offence twenty shillings, and for the third and every subsequent offence forty shillings, and the defendant, upon every such conviction, shall bear and pay the expenses of the prosecution, to be settled and ascertained by the justice convicting, and the amount thereof, together with such part of the penalty as such justice shall think proper, to be allowed and paid to the prosecutor for loss of time in instituting and following up the prosecution, at a rate not exceeding three shillings *per diem*, and the residue of such penalty to be paid to such justice, and by him, within seven days after his receipt thereof, to be transferred to some one of the overseers of the poor, or to some other officer (as the convicting justice or justices may direct), of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate; and no inhabitant of such county, riding, or division shall be deemed an incompetent witness in any proceeding under this

Act, by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid; and if the penalty, &c. be not forthwith paid after conviction, such justice shall, by warrant under his hand and seal, direct the same to be raised and levied by distress and sale of the goods and chattels of the offender, and in default and insufficiency of such distress commit the offender to the house of correction, with or without hard labour, on a first offence for seven days, on a second offence for fourteen days, and on a third or any subsequent offence, for one month, with or without hard labour, unless the whole of the penalty, costs, and expenses be sooner paid and discharged: provided nevertheless, that it shall be lawful for every baker residing beyond the limits aforesaid to deliver to his customers on the Lord's-day any bakings, until half an hour past one of the clock in the afternoon of that day, without incurring or being liable to any of the penalties in this act contained. *Id. s.* 14.

Conviction, same as *ante*, p. 213, with the alteration suggested *ante*, p. 220.

Opposing the execution of this Act.] "In case any person or persons shall resist or make forcible opposition against any person or persons employed in the due execution of this Act," penalty not exceeding ten pounds. *Id. s.* 16. The conviction in this case must describe the offence specially.

Offences by journeymen.] If any person making bread for sale, beyond the limits aforesaid, shall at any time make complaint to a justice of the peace, and make appear to him, by the oath or affirmation of any credible witness, that any offence which such person shall have been charged with, and for which he shall have incurred and paid any penalty under this act, shall have been occasioned by or through the wilful act, neglect, or default of any journeyman or other servant employed by or under him, the justice shall issue his warrant for bringing such journeyman or servant before him, or any justice of the peace acting in and for the city, county, division, or place where the offender can be found; and on any such journeyman or servant being thereupon apprehended and brought before any such justice, he shall examine into the matter of such complaint, and on proof thereof upon oath or affirmation, to the satisfaction of any such justice, such justice, by order under his hand, shall adjudge and order what reasonable sum of money shall be paid by such journeyman or servant to his master, as or by way of recompense to him for the money he shall have paid by reason of the wilful act, neglect, or default of any such journeyman or servant; and if any such journeyman or servant shall neglect or refuse, on his conviction, to make immediate payment of such sum of money, then such

justice shall, by warrant under his hand and seal, cause such journeyman or servant to be apprehended and committed to the house of correction, or some other prison of the city, county, division, or place in which such journeyman or servant shall be apprehended or convicted, to be there kept to hard labour for any term not exceeding one calendar month nor less than ten days, unless payment of the money shall be sooner made. *Id. s.* 13.

The order in this case must be special, reciting the conviction of the master, his complaint against the journeyman, the appearance of the latter and the hearing of the complaint, the order for the money, &c.

Proceedings for penalties.] One justice of the peace may hear and determine the offences against this Act. *Id. s.* 17. The complaint shall be made in a summary way to the magistrate usually acting for the district in which the offence shall be committed, who thereupon may issue his summons. *Id. s.* 20. And the complaint must be made within forty-eight hours after the offence committed, or within such reasonable time as to the justice shall seem fit. *Id. s.* 31. It is provided, however, by sect. 15, that no person who shall follow or be concerned in the business of a miller, mealman, or baker, shall be capable of acting, or shall be allowed to act as a justice of the peace under this Act, or in putting in execution any of the powers in or by this Act granted; and if any miller, mealman, or baker shall presume so to do, he shall for every such offence forfeit and pay the sum of one hundred pounds to any person who will sue for the same in any of his Majesty's courts of record at *Westminster*.

The summons to be served on any offender against this Act, shall (by sect. 18) be in the form, or to the effect following:—

To A. B. of ——.

County of } *Whereas complaint and information hath been*
to wit. } *made before me, C. D. one of Her Majesty's justices of the peace* [or *magistrate*] *for the said county, &c. by E. F., of* ——, *that*, &c. [here state the nature and circumstances of the case, as far as it shall be necessary to show the offence, and to bring it within the authority of the justice or magistrate, and in doing that, follow the words of the Act as near as may be]: *these are therefore to require you personally to appear before me (or such other justice or magistrate as shall be then and there present) at* ——, *in the said county, &c. on the* —— *day of* —— *next, at the hour of* —— *in the* —— *noon, to answer to the said complaint and information made by the said E. F., who is likewise directed to be then and there present to make good the same. Herein fail not. Given under my hand this* —— *day of* ——.

The information shall (by sect. 19) be in the form or to the effect following:—

County of } *Be it remembered, that on the —— day of ——,*
to wit. } *A. B. of ——, in the said county, informeth me,* —— *one of Her Majesty's justices of the peace* [or *magistrate*, as the case may be] *for the said county, that —— of ——, in the said county* [here describe the offence, with the time and place, and follow the words of the Act as near as may be], *contrary to the statute made in the —— year of the reign of King William the Fourth, intituled An Act* [set forth the title of this Act],* *which hath imposed a forfeiture of —— for the said offence. Taken the —— day of ——, before me, C. D.*

The conviction, by sect 23, may be drawn up in the form or to the effect following, (that is to say,)

Be it remembered, that on the —— day of ——, in
to wit. } *the —— year of the reign of ——, A. B. is convicted before —— Majesty's justices of the peace for the county of* [or *for the division of the said county of ——*, or *for the city, liberty*, or *town of ——*, as the case shall happen to be,] ——, *for ——; and —— do adjudge him* [or *her*, or *them*, as the case may be,] *to pay and forfeit for the same the sum of ——. Given under —— the day and year aforesaid.*

The blank here after the word "for," seems to be left for the description of the offence.

No order, judgment, or conviction, made touching or concerning any of the matters in this act contained, or of any proceedings to be had touching the conviction of any offender or offenders against this Act, shall be quashed for want of form, or be removed or removeable by certiorari. *Id. s.* 24.

Witnesses.] If it shall be made appear by the oath or affirmation of any credible person, that any person within the jurisdiction of any justice is likely to give material evidence on behalf of the prosecutor or the person accused, and will not voluntarily appear before such justice to be examined, such justice shall issue his summons to convene every such person before any such justice, at such seasonable time as in such summons shall be fixed; and if any person so summoned shall neglect or refuse to appear at the time by such summons appointed, and no just excuse shall be offered for such neglect or refusal, then, after proof upon oath or affirmation of such sum-

* "An act to repeal the several acts now in force relating to bread to be sold out of the City of London and the liberties thereof, and beyond the weekly bills of mortality, and ten miles of the Royal Exchange; and to provide other regulations for the making and sale of bread, and for preventing the adulteration of meal, flour, and bread, beyond the limits aforesaid."

mons having been duly served upon the party or parties so summoned, every such justice shall issue his warrant under his hand and seal to bring such person before any such justice; and on the appearance of any such person before any such justice, every such justice shall examine him upon oath or affirmation; and if, on his appearance, or on being brought before any such justice, he shall refuse to be examined upon oath or affirmation concerning the premises, without offering any just excuse for such refusal, any such justice, within the limits of his jurisdiction, may, by warrant under his hand and seal, commit the person so refusing to the public prison of the city, county, division, liberty, or place in which the person so refusing to be examined shall be, there to remain for any time not exceeding fourteen days, with or without hard labour. *Id. s.* 21.

Penalties, how levied and applied.] All penalties by this Act imposed (the manner of levying and recovering and applying whereof is not herein otherwise directed,) shall be levied, together with the costs attending the information and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand and seal of the convicting magistrate; and in case such penalties shall not be forthwith paid upon conviction, then it shall be lawful for such magistrate to order the offender to be detained in custody until return can be conveniently made to such warrant of distress, unless the offender shall give sufficient security for his appearance on such day as shall be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security; but if upon the return of such warrant, it shall appear that no sufficient distress can be had, then such magistrate shall, by warrant under his hand and seal, cause such offender to be committed to the common gaol or house of correction of the city, county, or place where the offender shall be or reside, there to remain without bail or mainprize for any time not exceeding one calendar month, with or without hard labour, (save and except as herein otherwise directed,) unless such penalties, and all reasonable charges attending the same, shall be sooner paid and satisfied. *Id. s.* 17.

And all penalties by this act inflicted, and the application of which is not hereinbefore directed, shall, when recovered or paid, go and be disposed of in manner following: (that is to say,) one moiety thereof, where any offender shall be convicted, either by his confession, or by the oath or affirmation of one or more credible witness or witnesses, shall go and be paid to the person who shall inform against and prosecute to conviction any such offender; and the other moiety thereof

(or in case there be no such person informing, then the whole thereof) shall go and be paid to some one of the overseers of the poor, or to some other officer, (as the convicting justice or justices may direct,) of the parish, township, or place in which the offence shall have been committed, to be by such overseer or officer paid over to the use of the general rate of the county, riding, or division in which such parish, township, or place shall be situate, whether the same shall or shall not contribute to such general rate; and no inhabitant of such county, riding, or division shall be deemed an incompetent witness in any proceeding under this act, by reason of the application of such penalty or forfeiture to the use of the said general rate as aforesaid. *Id. s.* 32.

Where any distress shall be made for any sum or sums of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same, be deemed a trespasser or trespassers on account of any defect or want of form in the summons, conviction, warrant of distress, or any other proceeding relating thereto; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity which shall be afterwards committed by the party or parties distraining, but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage (if any) in an action on the case; but no plaintiff or plaintiffs shall recover in any action for such irregularity as aforesaid, if tender of sufficient amends hath been made by or on the behalf of the party distraining before such action brought. *Id. s.* 24.

Appeal.] The appeal clauses in this Act, (sect. 25, 26,) are precisely the same as sect. 27 and 28 of stat. 3 G. 4, c. cvi. *ante*, p. 217, 218; it is only necessary therefore to refer to them.

Actions against justices, &c.] The Act contains the usual clauses as to the limitation of action, pleading the general issue, costs, &c., in actions against justices or officers, for any thing done under or by virtue of the Act. *Id. ss.* 29, 30.

Saving of rights, &c.] The Act also contains a saving of any right or custom of the universities of *Oxford* or *Cambridge*, or either of them, or of any lord or lords of any leets, or the rights of any clerk or clerks of the market in any place, which may be exercised and enjoyed by them, or any of them, by virtue of any charter, by-laws, prescriptions, usages, customs, privileges, grants, or Acts of Parliament, except so far as relates to the assize of bread, and the regulations of the price and weight thereof. *Id. s.* 33.

BRIBERY.

Bribery is the receiving or offering of any undue reward, by or to any person whatsoever, whose ordinary profession or business relates to the administration of public justice, in order to incline him to do a thing against the known rules of honesty and integrity. 1 *Hawk. c.* 67, *s.* 2. It is a misdemeanor at common-law, punishable, both as to the party receiving, and the party giving, or even offering the bribe, with fine or imprisonment, or both. *Id. s.* 7.

As to bribery of electors for members of parliament: by stat. 7 & 8 W. 3, c. 4, no candidate shall be guilty of such bribery, on pain of being incapacitated. And by stat. 2 G. 2, c. 24, s. 7, if any person shall take any money or other reward, or contract or agree for any money, gift, office, employment, or other reward, to give or forbear to give his vote, he shall forfeit 500*l*. And by stat. 5 & 6 Vict. c. 102, s. 20, it is declared and enacted, "that the payment or gift of any sum of money or other valuable consideration whatsoever to any voter, before, during, or after any election, or to any person on his behalf, or to any person related to him by kindred or affinity, and which shall be so paid or given on account of such voter having voted, or having refrained from voting, or being about to vote or refrain from voting, at the said election, whether the same shall have been paid or given under the name of head-money or any other name whatsoever, and whether such payment shall have been in compliance with any usage or practice or not,—shall be deemed bribery." As to treating, *see Id. s.* 22.

As to the bribery of officers of the customs, *see* 3 & 4 *W.* 4, *c.* 51, *s.* 8.

BRICKS AND TILES.

Bricks.] All bricks made for sale, shall, when burnt, be not less than 8½ inches long, 2½ thick, and 4 wide; under the penalty of 20*s.* for every thousand. 17 *G.* 3, *c.* 42, *ss.* 1, 2. This penalty may be recovered before one justice, and the penalty levied by distress; or if sufficient distress be not found, the offender may be committed for not more than two calendar months, unless the penalty and all reasonable charges be sooner paid. *Id. s.* 5. The penalty, if levied, shall be distributed, half to the informer, and half to the poor of the parish where the offender dwells. *Id.* The information must

be laid within one calendar month after the sale or delivery of the bricks. *Id. s.* 7.

The conviction, by sect. 6, may be in the following form, or to the like effect:—

Be it remembered that on the —— day of ——, in the year of our Lord ——, A. B. is convicted before me C. D., one of Her Majesty's justices of the peace for the —— of —— [*for that he the said A. B., on ——, at ——, did make for sale* 10,000 *bricks, which were less than eight inches and a half long, to wit, eight inches long only, against the form of the statute in such case made and provided.*] *Given under my hand and seal, the day and year aforesaid.*

Any person aggrieved may, within four calendar months, appeal to the general quarter sessions, giving twenty-one days' notice in writing of his intention to do so, and of the matter thereof, to the person whose act is complained of, and within eight days after notice, entering into recognizance to try the appeal and pay costs if awarded. *Id. s.* 8.

Tiles.] All pantiles made for sale shall not be less than 13½ inches long, 9½ inches wide, and half an inch thick; under the penalty of 10*s.* for every thousand. 17 *G.* 3, *c.* 42, *ss.* 1, 2. The conviction and proceedings, &c. are the same as is above-mentioned in the case of bricks, the same statute relating to both.

Plain tiles shall be 10½ inches long, 6½ broad, and half an inch and half a quarter thick: roof, or cres-tiles, 13 inches long, and half an inch and half a quarter thick, with convenient depth: gutter and cover tiles, 10½ inches long, with convenient thickness, breadth and depth. 17 *Edw.* 4, *c.* 4. Justices of peace and every of them may hear and determine offences against this Act, and assess upon the offender no less a fine than 5*s.* for every thousand plain tile, 6*s.* 8*d.* for every *hundred* roof tile, and 2*s.* for every corner or gutter tile. *Id.*

BRIDGES.

Not repairing.] Counties are liable for the repair of all the public bridges within them respectively, in the same manner as parishes are liable to repair the public highways within them. *See R.* v. *Derbyshire*, 2 Q. B. 745. And even where a portion of the county of Wilts, in which there was a county bridge, was added to the city of New Sarum, by the Boundary Act, stat. 2 & 3 W. 4, c. 64,—the city not being a county of

itself, but having a ne intromittant clause in its charter, and having a separate quarter sessions: the court held that the city was not liable to repair the bridge. *R.* v. *New Sarum*, 15 *Law J.* 15, *m.* A portion of a county, however, as a parish, &c. may be liable by custom to repair a particular bridge, or all bridges within it, in the same manner as a township or other district in a parish may by custom be liable to repair a highway. *R.* v. *Hendon*, 4 *B.* & *Ad.* 628; *and see R.* v. *Adderbury, East*, 5 *Q. B.* 187, 13 *Law J.* 9, *m.* So an individual, by reason of his tenure of lands, or a corporation by prescription, may be liable to repair a public bridge. *Co. Lit.* 700. *R.* v. *Oswestry*, 5 *M.* & *S.* 361. *And see Baker* v. *Greenhill et al.*, 3 *Q. B.* 148. And there is no difference in this respect between horse, foot, and carriage bridges; if they be public bridges, the inhabitants of the county must repair them, unless they can show that others are bound to do so, *ratione tenuræ* or otherwise. *R.* v. *Salop*, 13 *East*, 95. *R.* v. *Bucks*, 12 *East*, 192; *and see R.* v. *Derbyshire*, 11 *Law J.* 51, *m.* As to bridges erected by individuals, &c., and by them afterwards dedicated to the public, it is enacted by stat. 43 G. 3, c. 59, s. 5, that no bridge thereafter to be built in any county, at the expense of any private person or body politic or corporate, shall be deemed a county bridge, which the inhabitants of any county shall be compellable or liable to maintain or repair, unless such bridge shall be erected in a substantial and commodious manner, under the direction or to the satisfaction of the county surveyor. And this Act has been holden to extend to a bridge erected by the trustees of a turnpike road. *R.* v. *Derby*, 3 *B.* & *Ad.* 147.

Besides the repairing and maintaining of the bridge, the county are bound also to keep in repair 300 feet of the highway at each end of it. 22 *H.* 8, *c.* 5, *s.* 9. So a corporation liable to repair a bridge by prescription, are liable to repair the approaches to it also. *R.* v. *Mayor of Lincoln*, 8 *Ad.* & *El.* 65. But in case of bridges hereafter to be built, and which shall be reparable by the county or a part thereof, all highways leading to, passing over and next adjoining to such bridge, shall be repaired by the parish, or person &c., or trustees of a turnpike road, who were by law, before the erection of the said bridge, bound to repair the said highways; but the county, &c. shall repair the walls, banks or fences of the raised causeways and raised approaches to any such bridge, or the land arches thereof. 5 & 6 *W.* 4, *c.* 50, *s.* 21.

Where bridges are repairable by the county, the repairs are paid for out of the county-rate; and the justices at sessions, after indictment found, or presentment by the grand jury, as to the bridge being out of repair, may contract with any person for the repairs, or for keeping it in repair for a certain annual

sum; 12 *G.* 2, *c.* 29, *s.* 14; or, the justices at the Easter sessions may appoint any two or more of their body, acting for a division near any such county bridge, to superintend the same, who may, on their own inspection, and without any indictment or presentment, order immediate repairs to the extent of 10*l.*; 52 *G.* 3, *c.* 110, *ss.* 1, 2; or the justices at sessions may authorize any person to make contracts for the repair of county bridges and the roads at the end of them, by the year, for any term not exceeding seven years, although such bridges be not presented or indicted. 55 *G.* 3, *c.* 143, *s.* 1. Also, justices at sessions may raise money by mortgage of the county-rate, for the purpose of repairing county bridges. 4 *&* 5 *Vict.* c. 49. And lastly, by stat. 5 *&* 6 *W.* 4, *c.* 50, *s.* 22, all powers and authorities vested by that Act in the surveyors of highways, for the getting of materials, and for the removing of all nuisances and annoyances, are also vested in the surveyor of county bridges and the road at the end thereof repairable therewith; and the several penalties, forfeitures, matters and things in that Act contained relating to highways, were thereby extended, as far as applicable, to such bridges and the roads at the end thereof. *See post, tit.* "*Highway.*"

Destroying or damaging them.] "If any person shall unlawfully and maliciously pull down or in any wise destroy any public bridge, or do any injury with intent, and so as thereby to render such bridge or any part thereof dangerous or impassable;" felony, transportation for life, or for not less than seven years, or imprisonment with or without hard labour for not more than four years. 7 *&* 8 *G.* 4, *c.* 30, *s.* 13.

Commitment:—*On* —— *at* —— *unlawfully, maliciously, and feloniously did* [*pull down and destroy a certain public bridge there situate,* or if it were merely injured, state the injury done, *with intent thereby then and there to render the said bridge dangerous and impassable, and the said A. B. then and there did thereby render the same dangerous and impassable;*] *against the form of the statute in such case made and provided. And you the said keeper,* &c.

BROKER.

See "*Agent.*"

BURGLARY AND HOUSEBREAKING.

Burglary.] Burglary: felony, transportation for life or not less than ten years, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 86, *s.* 3.

Commitment: —— *on* —— *about the hour of eleven in the night, at* ——, *the dwelling-house of C. D., there situate, feloniously and burglariously did break and enter, with intent* [*the goods and chattels of the said C. D. in the said dwelling-house then and there being, then and there feloniously and burglariously to steal, take, and carry away;*] *and then and there in the said dwelling-house* [*one silver watch, of the goods and chattels of the said C. D., then and there feloniously and burglariously did steal, take, and carry away.*] *And you the said keeper,* &c.

Burglary and attempt to murder.] "Whosoever shall burglariously break and enter into any dwelling-house, and shall assault with intent to murder any person being therein, or shall stab, cut, wound, beat or strike any such person;" felony, death. 1 *Vict. c.* 86, *s.* 2.

Commitment, same as the last form, merely adding, after the statement of the offence, the assault, or stabbing, &c. thus: *and that the said A. B. then and there in the said dwelling-house, in the night-time as aforesaid, feloniously did* [*assault one E. F. in the said dwelling-house then and there being, with intent in so doing him the said E. F. thereby then and there feloniously, wilfully, and of his malice aforethought to kill and murder;* or, *stab, cut, and wound one E. F. in the said dwelling-house then and there being;*] *against the form of the statute in such case made and provided. And you the said keeper,* &c.

Principals in the second degree, and accessories before the fact, are punishable in the same way. 1 *Vict. c.* 86, *s.* 6.

Burglary by breaking out of a house.] "If any person shall enter the dwelling-house of another with intent to commit felony, or being in such dwelling-house shall commit felony, and shall in either case break out of the said dwelling-house in the night time:" this is declared to be burglary. 7 & 8 *G.* 4, *c.* 29, *s.* 11.

The same facts which constitute a breaking in the ordinary case of burglary, such as lifting a latch, or the like, will be deemed a breaking within the meaning of this section. *R. v. Wheeldon,* 8 *Car. & P.* 747.

Commitment:—*On* —— *at* ——, *being in the dwelling-house of C. D. there situate, one silver watch of the goods and chattels of* [*the said C. D.,* or *one E. F.*] *in the said dwelling-

house then and there being found, then and there in the said dwelling-house feloniously did steal, take and carry away; and that the said A. B., so being in the said dwelling-house aforesaid, and having committed the felony aforesaid, on the day and year aforesaid, in the night of the same day, to wit, about the hour of eleven in the night of the same day, at —— aforesaid, feloniously and burglariously did break out of the said dwelling-house; against the form of the statute in such case made and provided. And you the said keeper, &c.

Burglary, what.] Burglary is the breaking and entering of the dwelling-house of another, in the night-time, with intent to commit a felony therein. And the night-time, as relates to burglary, commences at nine o'clock in the evening, and concludes at six in the morning. 1 *Vict. c.* 86, *s.* 4.

As to the breaking: To constitute burglary, the breaking may be either an actual and forcible breaking of the door or window, or other part of the house, such as to admit of an entry into the dwelling-house; *R.* v. *Hughes*, 2 *East, P. C.* 491. *R.* v. *John Smith*, *R. & Ry.* 417. *R.* v. *Perkes*, 1 *Car. & P.* 300; or it may be, by lifting the latch of the door, and thereby opening it; *R.* v. *Jordan et al.*, 7 *Car. & P.* 432. *And see Pugh* v. *Griffith*, 7 *Ad. & El.* 836; raising a trap door, which is kept down merely by its own weight; *R.* v. *Russell*, *Ry. & M.* 377; opening a window, which is shut down, although not fastened; *R.* v. *Hyams*, 7 *Car. & P.* 441. *R.* v. *Haines and Harrison*, *R. & Ry.* 451. *And see R.* v. *Hall*, *R. & Ry.* 355; or even by getting down the chimney. *R.* v. *Brice*, *R. & Ry.* 450. But entering at a place already open, *R.* v. *Lewis*, 2 *Car. & P.* 628, or if a window be partly open, and the entry is effected by throwing a sash quite up, *R.* v. *Henry Smith*, *Ry. & M.* 178. *See R.* v. *Robinson*, *Moody*, 327, this is not such a breaking as is necessary to constitute burglary. *And see R.* v. *Johnson et al.*, 1 *Car. & M.* 218. The breaking, however, must be of some part of the dwelling-house; and therefore, unlocking an area gate, *R.* v. *Davis*, *R. & Ry.* 322, or the like, is not a breaking of the house, so as to constitute burglary. The breaking, also, must be in the night-time.

As to the entry: an entry of any part of the person within the house will be sufficient, although the party be detected, or abandon his design, before he has had an opportunity of effecting the felony intended. *R.* v. *Bayley*, *R. & Ry.* 341. And therefore where a shop window, within which there were watches and jewellery, was broken by the prisoner thrusting his finger through it, and the finger was seen on the other side, the judges held this to be a sufficient entry to constitute burglary. *R.* v. *John Davis*, *R. & Ry.* 499. The entry must be in the night-time; but it is not necessary that it should be on

the same night as the breaking; where a breaking with intent to enter, was effected on Friday night, and the entry was not until the Sunday night following, the judges held it to be burglary. *R.* v. *John Smith*, *R.* & *Ry.* 417.

The house must be a dwelling-house, that is to say, a house in which the occupier or his family usually sleep at night. And if a shop or counting-house, part of a dwelling-house, and communicating with it, be broken and entered in the night-time, it may be alleged to be a burglary in the dwelling-house. *R.* v. *Gibbons and Kew*, *R.* & *Ry.* 442. *R.* v. *Stocket et al. Id.* 185. So, all outhouses, within the same curtilage with the dwelling-house, occupied and immediately connected and communicating with it, may be the subject of burglary, and the burglary in such cases may be alleged to have been in the dwelling-house. Formerly this was the case with respect to all buildings within the curtilage. But by stat. 7 & 8 G. 4, c. 29, s. 13, no building, although within the same curtilage with the dwelling-house, and occupied with it, shall be deemed to be part of such dwelling-house for the purpose of burglary, unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from the one to the other. *See R.* v. *Burrowes*, *R.* & *Ry.* 274. *R.* v. *Jenkins*, *Id.* 244. If the house be occupied by servants only, it should in general be described as the dwelling-house of the master; *R.* v. *Stack*, *R.* & *Ry.* 185. *R.* v. *Rawlins et al.*, 7 *Car.* & *P.* 150; if by lodgers only, then the apartments of each lodger may be described as his dwelling-house; *R.* v. *John Bayley*, *Ry.* & *M.* 23. *R.* v. *Trapshaw*, 1 *Leach*, 427; if both by lodgers and the landlord or his servant, then if they have but one common entrance, the whole may be described as the dwelling-house of the landlord; *R.* v. *Gibbons and Kew*, *R.* & *Ry.* 442; but if there be separate entrances, and there be no internal communication between the part occupied by the lodgers and that occupied by the landlord, the former may be described as the dwelling-house of the lodgers respectively, and the latter as that of the landlord, if he or his servants reside in it. 1 *Arch. Peel's Acts*, 313. If the house be occupied by a married woman, it must be described as the dwelling-house of the husband, although he be separated from her. *R.* v. *French*, *R.* & *Ry.* 491. *R.* v. *Wilford et al. Id.* 517. A mistake, however, in the ownership of the houses, will not affect the validity of the warrant.

As to the intent: the intent usually laid and proved is to commit a larceny; but it may be, to commit any other felony.

Breaking and entering a church or chapel.] "If any person shall break and enter any church or chapel, and steal therein

any chattel, or having stolen any chattel in any church or chapel, shall break out of the same:" felony, 7 & 8 *G.* 4, *c.* 29, *s.* 10, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than three years, and solitary confinement during any portion of the imprisonment. 6 *W.* 4, *c.* 4. The chapels of dissenters are holden not to be within this enactment. *R.* v. *Nixon and Scroop*, 7 *Car.* & *P.* 442. *R.* v. *Warren and Spencer*, 6 *Id.* 335, *n.*.

Commitment: ——, *on* ——, *at* ——, *the church of the said parish* [or *a certain chapel*] *there situate feloniously did break and enter, and* [*one silver cup,*] *of the chattels of the parishioners of the said parish, feloniously and sacrilegiously did steal, take, and carry away; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Commitment for stealing and then breaking out, may readily be framed from this form, and the form, *ante*, p. 234.

Housebreaking.] "If any person shall break and enter any dwelling-house, and steal therein any chattel, money, or valuable security, to any value whatever:" felony, 7 & 8 *G.* 4, *c.* 29, *s.* 12, transportation for not more than fifteen years nor less than ten, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 90, *s.* 1. *See Whitehead* v. *R.*, 14 *Law, J.* 165, *m.* No building, though within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed a part of such dwelling-house for the purpose aforesaid, unless there shall be a communication between such building and dwelling-house, either immediate, or by means of a covered and inclosed passage leading from the one to the other. 7 & 8 *G.* 4, *c.* 29, *s.* 13. Any the slightest removal of the goods from one part of the house to another, although the party be interrupted or detected before he has time to carry them off, will be sufficient to complete the larceny, in this as in ordinary cases. *R.* v. *Amier*, 6 *Car.* & *P.* 344. The house must be a dwelling-house, as in burglary. *See ante*, p. 236.

Commitment:—*On* ——, *at* ——, *the dwelling-house of C. D. there situate, feloniously did break and enter, and two pewter dishes, of the goods and chattels of the said C. D., in the said dwelling-house then and there being, feloniously did steal, take and carry away; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Breaking and entering a house in the day-time, with intent to steal, but no larceny actually committed, is a misdemeanor, punishable with fine, or imprisonment, or both. The commitment may be thus:—*On* ——, *at* ——, *the dwelling-house of C. D., there situate, unlawfully did break and enter, with intent then and there and therein divers goods and chattels,*

in the said dwelling-house then and there being, feloniously to steal, take and carry away. And you the said keeper, &c. It is not necessary to state whose goods they were. *R.* v. *Lawes et al.*, 1 *Car.* & *K.* 62.

Breaking and entering a building within the curtilage.] "If any person shall break and enter any building, and steal therein any chattel, money, or valuable security, such building being within the curtilage of a dwelling-house, and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned," (that is to say, there being no communication between such building and dwelling-house, either immediate, or by means of a covered and inclosed passage leading from the one to the other: *see* 7 & 8 *G.* 4, *c.* 29, *s.* 13, *ante*, p. 236:) felony, 7 & 8 *G.* 4, *c.* 29, *s.* 14, transportation for not more than fifteen years, nor less than ten, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 90, *s.* 2. *See R.* v. *Gilbert et al.*, 1 *Car.* & *K.* 84.

Commitment:—*On* ——, *at* ——, *a certain building of C. D. there situate, feloniously did break and enter* (*the said building being then within the curtilage of the dwelling-house of the said C. D. there situate, and by the said C. D, then and there occupied therewith, and there being then and there no communication between the said building and the said dwelling-house, either immediate, or by means of any covered and inclosed passage leading from the one to the other;*) *and the said A. B. then and there, in the said building,* [*one silver watch,*] *of the goods and chattels of the said C. D., feloniously did steal, take, and carry away; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Breaking and entering a shop, warehouse, &c.] "If any person shall break and enter any shop, warehouse, or counting-house, and steal therein any chattel, money, or valuable security:" felony, 7 & 8 *G.* 4, *c.* 29, *s.* 15, transportation for not more than fifteen years nor less than ten, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 90, *s.* 2. Where a blacksmith, who also dealt in coals, had a room beyond his workshop for holding his coals, and persons wishing to purchase, went to this room for the purpose: a person being indicted for stealing coals from this place, as from a shop, Alderson, B. held that this was not a shop within the meaning of stat. 7 & 8 G. 4, c. 29, s. 15; a workshop, such as a blacksmith's or carpenter's shop, was not within the Act. *R.* v. *Saunders*, 9 *Car.* & *P.* 79. But this has since been ruled otherwise, by Ld. Denman, C. J. *R.* v. *Carter*, *Car.* & *K.* 173.

Commitment:—*On* ——, *at* ——, *the shop of C. D. there*

situate, feloniously did break and enter, and two silk handkerchiefs, of the value of two shillings, of the goods and chattels of the said C. D., in the said shop then and there being, then and there in the said shop feloniously did steal, take, and carry away; against the form of the statute in such case made and provided. And you the said keeper, &c.

BURIAL.

See "Dead Bodies."

BURNING.

Church or chapel.] "Whosoever shall unlawfully and maliciously set fire to any church or chapel, or to any chapel for the religious worship of persons dissenting from the united church of England and Ireland:" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 89, *s.* 3.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did set fire to a certain* [*church*] *there situate; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Dwelling-house, any person being therein.] "Whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein:" felony, death. 1 *Vict. c.* 89, *s.* 2.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain dwelling-house of C. D. there situate, one E. F. being, at the time of the committing of the said felony, in the said dwelling-house; against the form of the statute in such case made and provided. And you the said keeper,* &c.

House, outhouse, manufactory, &c.] Whosoever shall, "unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hopoast, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession

in the said dwelling-house then and there being, feloniously to steal, take and carry away. And you the said keeper, &c. It is not necessary to state whose goods they were. *R.* v. *Lawes et al.*, 1 *Car.* & *K.* 62.

Breaking and entering a building within the curtilage.] "If any person shall break and enter any building, and steal therein any chattel, money, or valuable security, such building being within the curtilage of a dwelling-house, and occupied therewith, but not being part thereof, according to the provision hereinbefore mentioned," (that is to say, there being no communication between such building and dwelling-house, either immediate, or by means of a covered and inclosed passage leading from the one to the other: *see* 7 & 8 *G.* 4, *c.* 29, *s.* 13, *ante*, p. 236:) felony, 7 & 8 *G.* 4, *c.* 29, *s.* 14, transportation for not more than fifteen years, nor less than ten, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 90, *s.* 2. *See R.* v. *Gilbert et al.*, 1 *Car.* & *K.* 84.

Commitment:—*On* ——, *at* ——, *a certain building of C. D. there situate, feloniously did break and enter* (*the said building being then within the curtilage of the dwelling-house of the said C. D. there situate, and by the said C. D, then and there occupied therewith, and there being then and there no communication between the said building and the said dwelling-house, either immediate, or by means of any covered and inclosed passage leading from the one to the other;*) *and the said A. B. then and there, in the said building,* [*one silver watch,*] *of the goods and chattels of the said C. D., feloniously did steal, take, and carry away; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Breaking and entering a shop, warehouse, &c.] "If any person shall break and enter any shop, warehouse, or counting-house, and steal therein any chattel, money, or valuable security:" felony, 7 & 8 *G.* 4, *c.* 29, *s.* 15, transportation for not more than fifteen years nor less than ten, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 90, *s.* 2. Where a blacksmith, who also dealt in coals, had a room beyond his workshop for holding his coals, and persons wishing to purchase, went to this room for the purpose: a person being indicted for stealing coals from this place, as from a shop, Alderson, B. held that this was not a shop within the meaning of stat. 7 & 8 G. 4, c. 29, s. 15; a workshop, such as a blacksmith's or carpenter's shop, was not within the Act. *R.* v. *Saunders*, 9 *Car.* & *P.* 79. But this has since been ruled otherwise, by Ld. Denman, C. J. *R.* v. *Carter*, *Car.* & *K.* 173.

Commitment:—*On* ——, *at* ——, *the shop of C. D. there*

situate, feloniously did break and enter, and two silk handkerchiefs, of the value of two shillings, of the goods and chattels of the said C. D., in the said shop then and there being, then and there in the said shop feloniously did steal, take, and carry away; against the form of the statute in such case made and provided. And you the said keeper, &c.

BURIAL.

See "Dead Bodies."

BURNING.

Church or chapel.] "Whosoever shall unlawfully and maliciously set fire to any church or chapel, or to any chapel for the religious worship of persons dissenting from the united church of England and Ireland:" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 89, *s.* 3.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously and feloniously did set fire to a certain* [*church*] *there situate; against the form of the statute in such case made and provided. And you the said keeper, &c.*

Dwelling-house, any person being therein.] "Whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein:" felony, death. 1 *Vict. c.* 89, *s.* 2.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain dwelling-house of C. D. there situate, one E. F. being, at the time of the committing of the said felony, in the said dwelling-house; against the form of the statute in such case made and provided. And you the said keeper, &c.*

House, outhouse, manufactory, &c.] Whosoever shall, "unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hopoast, barn or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession

of any other person, with intent thereby to injure or defraud any person:" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour, for not more than three years. 1 *Vict. c.* 89, *s.* 3. The word "house" here, seemingly means a dwelling-house only. 2 *Arch. Peel's Acts*, 3. And therefore where a building erected, not for habitation, but for workmen to take their meals and dry their clothes in, which, had a roof, a door, but no windows, was holden not to be a house, within the meaning of this section, although a person slept in it with the knowledge, but without the permission, of the owner. *R.* v. *England et al.*, *Car.* & *K.* 533. As to what shall be deemed an outhouse, *see* 2 *Arch. Peel's Acts*, 3, *and R.* v. *Winter*, *R.* & *Ry.* 295. *R.* v. *Ellison and Vines*, *Ry.* & *M.* 336. *R.* v. *Haughton*, 5 *Car.* & *P.* 555. *R.* v. *Parrott*, 6 *Id.* 402. A pig-stye, in an enclosed yard at the back of the dwelling-house, has been deemed such an outhouse. *R.* v. *James*, *Car.* & *K.* 303. And as to what shall be deemed a setting fire to a house, &c., *see R.* v. *Parker*, 9 *Car.* & *P.* 45. *R.* v. *Russell*, 1 *Car.* & *M.* 541.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain* [*dwelling-house*] *of C. D. there situate, with intent then and there* [*to injure the said C. D.*, or *to defraud a certain insurance company called* ——;] *against the form of the statute in such case made and provided. And you the said keeper*, &c.

Farm buildings.] Whoever shall "unlawfully and maliciously set fire to any hovel, shed or fold, or to any farm building, or any building or erection used in farming land, whether the same or any of them respectively shall then be in the possession of the offender or in the possession of any other person,—with intent thereby to injure or defraud any person:"—felony, transportation for life, or for not less than 15 years, or imprisonment [with or without hard labour, *see sect.* 3, *and* 1 *Vict. c.* 89, *s.* 12,] for not more than three years; 7 & 8 *Vict. c.* 62, *s.* 1; and if the offender be a male under the age of eighteen, the court in their discretion may also adjudge him to be publicly or privately whipped, in such manner, and as often, (not exceeding thrice) as they shall direct. *Id. s.* 3.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain* [*farm building, to wit, a cart-house*] *of C. D. there situate, with intent thereby then and there* [*to injure the said C. D.*; or *to defraud a certain insurance company called* ——;] *against the form of the statute in such case made and provided. And you the said keeper*, &c.

Hay, straw, implements, &c. in farm buildings.] Whoever shall "unlawfully and maliciously set fire to any hay, straw, wood, or other vegetable produce, being in any farm house or

farm building, or to any implement of husbandry, being in any farm house or farm building,—with intent thereby to set fire to such farm house or farm building, and to injure or defraud any person:"—the same punishment as for unlawfully and feloniously setting fire to the said farm house or farm building, with intent thereby to injure or defraud such person. 7 & 8 *Vict. c.* 62, *s.* 2.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to certain* [*hay,*] *the same being then and there in a certain* [*farm building, to wit, a* ——] *of C. D. there situate, with intent thereby then and there to set fire to the said farm buildings, and then and there* [*to injure the said C. D.,* or *to defraud a certain insurance company called* ——;] *against the form of the statute in such case made and provided. And you the said keeper,* &c.

Stacks of corn, hay, wood, &c.] "Whosoever shall unlawfully and maliciously set fire to any stack of corn, grain, pulse, tares, straw, haulm, stubble, furze, heath, fern, hay, turf, peat, coals, charcoal or wood, or any steer of wood:" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 89, *s.* 10. Beans have been holden to be "pulse," within the meaning of the Act. *R.* v. *Woodward, Ry.* & *M.* 323.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain stack of* [*wheat,*] *the property of C. D. then and there being; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Crops of corn or pulse, trees, furze, &c.] "If any person shall unlawfully and maliciously set fire to any crop of corn, grain or pulse, whether standing or cut down, or to any part of a wood, coppice or plantation of trees, or to any heath, gorze, furze or fern, wheresoever the same may be growing:" felony, transportation for seven years, or imprisonment with or without hard labour for not more than two years. 7 & 8 *G.* 4, *c.* 30, *s.* 17.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain* [*crop of wheat,*] *the property of C. D., then and there standing and growing; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Coal mines.] "Whosoever shall unlawfully and maliciously set fire to any mine of coal or cannel-coal:" felony, transportation for life, or not less than fifteen years, or imprisonment

with or without hard labour for not more than three years. 1 *Vict. c.* 89, s. 9.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did set fire to a certain mine of* [*coal*] *of C. D. and others there situate; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Ships, whereby life endangered, &c.] "Whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered:" felony, death. 1 *Vict. c.* 89, *s.* 4. Patteson, J. inclined to think that a pleasure-boat, eighteen feet long, was a vessel within the meaning of the Act. *R.* v. *Bowyer et al.*, 4 *Car.* & *P.* 559. In another case, Alderson, B. doubted whether a barge was so. *R.* v. *Smith*, 4 *Car.* & *P.* 569.

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did* [*set fire to*] *a certain ship called the* ——, *the property of C. D.* [*upon the high seas,*] *then and there being,* [*with intent in so doing, one E. F. then and there feloniously, wilfully, and of his malice aforethought to kill and murder,* or, *whereby the life of one E. F. was then and there greatly endangered;*] *against the form of the statute in such case made and provided. And you the said keeper,* &c.

Ships, with intent to destroy them.] "Whosoever shall unlawfully and maliciously set fire to, or in anywise destroy, any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same:" felony, transportation for life, or not less than fifteen years, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 89, *s.* 6. As to the meaning of the word "vessel," *vide supra.*

Commitment:—*On* ——, *at* ——, *unlawfully, maliciously, and feloniously did* [*set fire to*] *a certain ship called the* ——, *the property of C. D.* [*upon the high seas then and there being,*] *with intent thereby then and there to prejudice* [*the said C. D. the owner thereof,* or *one E. F., the owner of certain goods on board thereof,* or *one G. H. and J. K. who had before then severally underwritten a certain policy of insurance upon* ——;] *against the form of the statute in such case made and provided. And you the said keeper,* &c.

BUTCHER.

See "Sunday."

BUTTONS.

See "Manufactures."

BUYING OF TITLES.

Buying a disputed title to lands, with intent that the purchaser shall commence or carry on the suit, is a misdemeanor at common law. 1 *Hawk, c.* 86, *s.* 1. And by stat. 32 H. 8, c. 9, the seller shall forfeit the lands; and the purchaser the value thereof, one-half to the king, and the other to the informer, to be recovered by action, &c.

CABBAGES, STEALING.

See "Larceny."

CANAL.

See "Larceny." "Malicious Injuries."

CARNALLY KNOWING FEMALE CHILDREN.

Under ten.] "If any person shall unlawfully and carnally know and abuse any girl under the age of ten years:" felony. 9 *G.* 4, *c.* 31, *s.* 17; transportation for life, 4 *&* 5 *Vict. c.* 56, *s.* 3, although the girl consent to it. The carnal knowledge shall be deemed complete, upon proof of penetration only, without proof of emission; *Id. s.* 18; or, even although the emission be negatived by the evidence. *R.* v. *Cox, Ry. & M.* 337. *R.* v. *Gammon*, 5 *Car. & P.* 321. And any penetration, however trifling, will be sufficient to constitute the offence. *R.* v. *Lines*, 1 *Car. & K.* 393. In one case, indeed, Gurney B. held, that if the penetration were not sufficient to

rupture the hymen, it would not be sufficient to constitute the offence. But this has since been ruled otherwise, and that rupturing the hymen is not at all necessary to the proof of penetration. *R.* v. *Hughes*, 9 *Car.* & *P.* 752; *and see R.* v. *M'Rue*, 8 *Car.* & *P.* 641. And in *R.* v. *Jordan et al.*, 9 *Car.* & *P.* 118, Williams, J. held that it was not necessary that the hymen should be ruptured, to constitute carnal knowledge of a girl.

Commitment:—*On* ——, *at* ——, *feloniously did assault one C. D., a girl under the age of ten years, to wit, of the age of nine years, and her the said C. D. then and there feloniously did unlawfully and carnally know and abuse, against the form of the statute in such case made and provided. And you the said keeper*, &c.

As to an assault with intent to commit this offence, *see ante*, p. 142, "*Assault with intent to commit a felony.*"

Above ten and under twelve.] "If any person shall unlawfully and carnally know and abuse any girl, being above the age of ten years and under the age of twelve years:" misdemeanor, imprisonment, with or without hard labour, for such term as the court shall award. 9 *G.* 4, *c.* 31, *s.* 17. This is to be understood of cases where the girl consents to the act; if it be done without her consent, it is rape, and punishable accordingly. *See R.* v. *Neale*, 1 *Car.* & *K.* 591. Where a man was indicted for carnally knowing a girl between the ages of ten and twelve, and in other counts for an assault with intent to do so, and with a common assault, and the evidence only proved an attempt to have carnal knowledge, which hurt the girl, but which appeared to have been done perfectly with the girl's consent: the judges held that the prisoner could not be convicted of the assault with intent, &c., or of the common assault; it being done with the girl's consent, it could not be deemed an assault; but that the prisoner might have been indicted for a misdemeanor, in attempting to commit the offence. *R.* v. *Martin*, *Car.* & *P.* 313. *And see Id.* 215. A girl's merely submitting to such an outrage, however, is not to be deemed conclusive of her consent to it, as it might in the case of a woman or adult girl, but the jury will have to judge from the facts of the case, whether she consented willingly, or merely submitted to it from fear; and if the latter, the prisoner may be convicted on an indictment as for a common assault. *R.* v. *Day*, 9 *Car.* & *P.* 722, *per Coleridge*, *J.* As to what amounts to carnal knowledge, within the meaning of the statute, *vide supra*.

Commitment:—*On* ——, *at* ——, *unlawfully did assault one C. D., a girl above the age of ten years, and under the age of twelve years, to wit, of the age of eleven years, and her the said C. D. then and there did unlawfully and carnally know*

and abuse; against the form of the statute in such case made and provided. And you the said keeper, &c.

An attempt to commit this offence is also a misdemeanor, and punishable with fine or imprisonment, or both.

CARRIER.

See "Highway," "Sunday."

CARROTS.

See "Larceny."

CATTLE.

Stealing, or killing with intent to steal.] "If any person shall steal any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep, or lamb; or shall wilfully kill any of such cattle, with intent to steal the carcass or skin, or any part of the cattle so killed:" felony, 7 & 8 *G.* 4, c. 29, *s.* 25, transportation for not more than 15 years, nor less than 10 years, or imprisonment, for not more than 3 years. 1 *Vict. c.* 90, *s.* 1. The word "sheep" here includes wethers, rig sheep, *R.* v. *Stroud*, 6 *Car.* & *P.* 535, and every other description of sheep not coming within the terms "ram," "ewe," and "lamb." *See* 1 *Arch. Peel's Acts*, 351; *but see R.* v. *Spicer*, 1 *Car.* & *K.* 699. As to the stealing, see *post, tit.* "*Larceny.*" Where a man cut the throat of an ewe, with intent to steal the carcass, but was interrupted before he actually killed it, and it afterwards lived for two days; being convicted upon this statute, the judges held the conviction to be right. *R.* v. *Sutton*, 8 *Car.* & *P.* 291.

Commitment for stealing:—*On* ——, *at* ——, *one gelding* [or as the case may be] *of the goods and chattels of one C. D., feloniously did steal, take, and drive away. And you the said keeper, &c.*

Commitment for killing with intent to steal:—*On* ——, *at* ——, *one ewe*, [or as the case may be] *of the goods and chattels of one C. D., wilfully and feloniously did kill, with intent then and there feloniously to steal, take and carry away the carcass* [or *the skin*, or *a certain part of the carcass, that is to say, the*

inward fat] *of the said ewe; against the form of the statute in such case made and provided. And you the said keeper, &c.*

Maliciously killing or wounding.] "If any person shall unlawfully and maliciously kill, maim, or wound any cattle:" felony, 7 & 8 *G.* 4, *c.* 30, *s.* 16, transportation for not more than fifteen nor less than seven years, or imprisonment with or without hard labour for not more than three years. 1 *Vict. c.* 90, *s.* 2. Asses are cattle within the meaning of this Act; *R.* v. *Whitney, Ry. & M.* 3; so are pigs; *R.* v. *Sarah Chapple, R. & Ry.* 77; so are sheep, oxen, cows, horses, &c. To constitute a wounding within the meaning of this Act, it is not necessary that it should create a permanent injury; *R.* v. *Haywood, R. & Ry.* 16; but to constitute a maiming, it must. *R.* v. *Jeans,* 1 *Car. & K.* 539. Where a man wilfully set fire to a cow-house, and a cow in it was thereby burnt to death, Taunton, J. held it to be a killing of the cow within the meaning of this Act. *R.* v. *Haughton,* 5 *Car. & P.* 559. But where a man set a dog at a sheep, and the sheep was thereby wounded, Park, J. held that this was not an offence within the Act. *R.* v. *Hughes,* 2 *Car. & P.* 420. It is not necessary that the offence should be committed from any malice towards the owner of the cattle; 7 & 8 *G.* 4, *c.* 30, *s.* 25; *R.* v. *Tivey,* 1 *Car. & K.* 704; if it appear that the prisoner did the act purposely, he may be deemed to have done it maliciously.

Commitment:—*On* ——, *at* ——, *one bay mare, the property of C. D., unlawfully, maliciously, and feloniously did kill* [or as the case may be]; *against the form of the statute in such case made and provided. And you the said keeper, &c.*

Ill-treating.] If any person shall "wantonly and cruelly beat, ill-treat, abuse, or torture any horse, mare, gelding, bull, ox, cow, heifer, steer, calf, mule, ass, sheep, lamb, dog, or any other cattle or domestic animal;—or if any person, who shall drive any cattle or other animal, shall, by negligence or ill-usage in the driving thereof, be the means whereby any mischief, damage, or injury shall be done by any such cattle or other animal:"—upon conviction before one justice, he shall forfeit and pay (over and above the amount of the damage or injury, if any, done thereby, which damage or injury shall be ascertained and determined by such justice,) such a sum of money, not exceeding forty shillings nor less than five shillings, with costs, as to such justice shall seem meet, or in default of payment, he shall be imprisoned for not more than fourteen days. 5 & 6 *W.* 4, *c.* 59, *s.* 2.

Conviction for ill-treating, as *post* p. 248:—*On* ——, *at* ——, *did wantonly and cruelly beat, ill-treat and abuse a certain* [*gelding*]; *against the form of the statute in such case made and provided. And I the said J. P. do adjudge, &c.*

Conviction for doing damage by ill-usage in driving, &c. as *post*, p. 248;—*On* ——, *at* ——, *was driving a certain ox, the property of one C. D., through and along a certain public street, and whilst he the said A. B. was so driving the said ox as aforesaid, he then and there violently beat and ill-used the same, by means of which said violent beating and ill-usage, he the said A. B. then and there caused the said ox to* [here state the injury done], *thereby doing damage unto the said C. D. to the amount of* ——. *And I the said J. P. do adjudge*, &c.

Keeping a cock-pit or place for bull-baiting, &c.] "If any person shall keep or use any house, room, pit, ground or other place for the purpose of running, baiting, or fighting any bull, bear, badger, dog, or other animal (whether of domestic or wild nature or kind) or for cock-fighting, or in which any bull, bear, badger, dog or other such animal shall be baited, run, or fought:" penalty, not more than 5*l.* nor less than 10*s.* for every day in which he shall so keep and use such house, room, pit, ground, or place, for any of the purposes aforesaid. *Id. s.* 3.

The person who shall act as the manager of any such place, &c. or who shall receive any money for the admission of any person thereto, or who shall assist in any such baiting or fighting, or bull running, shall be deemed and taken to be the keeper of the same, and liable to all penalties, &c. *Id. s.* 3.

Conviction, as *post*, p. 248:—*On* ——, *at* ——, *unlawfully did keep a certain pit and place there for the purpose of cock-fighting* [or as the case may be]; *against the form of the statute in such case made and provided. And I the said J. P. do adjudge*, &c..

Not feeding cattle impounded.] The Act directs that any person who impounds any "horse, ass, or other cattle or animal" in any common pound, open or close, or in any inclosed place, shall supply such horse, &c. daily with good and sufficient food and nourishment, so long as he shall be so impounded; and he may recover from the owner of the cattle, not exceeding double the value of the food so supplied, "by proceeding before any one justice of the peace, within whose jurisdiction such cattle or animal shall have been so impounded and supplied with food as aforesaid, in like manner as any penalty or forfeiture, or any damage or injury, may be recovered under and by virtue of any of the powers or authorities in this act contained, and which value of the food and nourishment so to be supplied as aforesaid, such justice is hereby fully authorized and empowered to ascertain, determine and enforce as aforesaid;" or he may sell the cattle after seven days, giving three days' public printed notice thereof. *Id. s.* 4.

And if the party impounding such cattle, &c. "shall refuse or neglect to find, provide and supply such daily good and

sufficient food and nourishment" to the same, he shall forfeit and pay five shillings for every day he shall so refuse or neglect to do so,—to be recovered in like manner as any penalty under this act. *Id. s.* 6.

Conviction, as *post*, p. 248 :—*On* ——, *at* ——, *impounded one mare in the common pound there, and on that day and also on* —— *did* [*refuse and*] *neglect to find, provide or supply the said mare daily with good and sufficient food and nourishment, but on the contrary thereof during all the time aforesaid he the said A. B. did not find, provide or supply the said mare with any food or nourishment whatsoever* [or as the case may be]; *against the form of the statute in such case made and provided. And I the said J. P. do adjudge*, &c.

Proceedings for penalties.] The offender may be apprehended, without warrant, by any constable or by the owner of the animal, either upon view of the offence, or upon the information of any other person who shall declare his name and place of abode to the constable; and he shall then be taken before a justice of the peace, who shall examine the witnesses, &c. *Id. s.* 9. If when before the justice the prisoner shall refuse to tell his name and place of abode, he shall be delivered over to a constable, and by him be taken to the common gaol or house of correction, there to remain for not more than one calendar month, or until he make known his name or place of abode to the said justice. *Id. s.* 10.

Prosecutions under this Act must be commenced within three calendar months after the commission of the offence. *Id. s.* 11. But in another section it is provided, that in all cases where no other mode of proceeding is specially provided, or in any case where the party shall not be conveyed before a justice by the authority of this Act, it shall be lawful for any one justice, upon information or complaint made by any person of an offence against this Act, "within fourteen days next after the commission of any such offence," to summon the party before him or some other justice; and upon his appearance or default, to examine into the matter, &c. *Id. s.* 13. Which summons or a copy may be served personally, or left for the party at his usual or last known place of abode. *Id. s.* 15.

The evidence of the party complaining shall be received in proof of the offence; *Id. ss.* 11, 18; so, the evidence of any overseer or inhabitant of the parish, though the penalty go to the poor of that parish. *Id. s.* 11.

The conviction shall be in the following form, or to the effect thereof, or as near thereto as the case shall require. *Id. s.* 14.

County (or as the case may be) *of* —— } *Be it remembered that on the* —— *day of* —— *in the year of*

our Lord ——, *at* —— *in the county* [or as the case may be] *of* ——, *A. B. is convicted before me, J. P. one of Her Majesty's justices of the peace for the said county* [or as the case may be,] *for that he the said A. B., on the* —— *day of* ——, *in the year* ——, *at* —— *in the said* ——, *did* [here specify the offence, and on a second conviction state the first;] *and I the said J. P. do adjudge the said A. B. for his said offence to forfeit and pay the sum of* —— [here state the penalty actually imposed, or the penalty and also the amount of the injury done, or as the case may be,] *and also to pay the sum of* —— *for costs, and, in default of immediate payment of the said sums, to be imprisoned in the* ——, [or in case of a second or subsequent conviction, *to be there kept to hard labour*] *for the space of* ——, *unless the said sums shall be sooner paid; and I direct that the said sum of* —— [the penalty] *shall be paid as follows: that is to say, one moiety thereof, to the overseers of the poor of the said parish of* ——, *to be by them applied according to the directions of the statute in that case made and provided, and the other moiety thereof to C. D. of* —— [*the prosecutor,* or as the case may be;] *and that the said sum of* —— [the sum for the amount of injury done, if any sum is awarded,] *shall be paid to E. F.* [or *the said C. D.* as the case may be;] *and I order that the said sum of* —— *for costs, shall be paid to the said C. D. Given under my hand and seal the day and year first above mentioned.*

Recovery and distribution of penalties.] Where the penalty or sum awarded for damage shall not be paid, either immediately or within the time appointed by the justice, the justice may commit the offender to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for not more than fourteen days if the sum and costs do not exceed 5*l.* or for not more than two calendar months where the sum and costs exceed that; the commitment to determine on payment of such sum and costs. *Id. s.* 12.

One moiety of the penalty is to go to the overseer of the poor of the parish where the offence was committed, to be applied in aid of the parish rates; the other moiety and costs to the informer or prosecutor, or to such person as the justice shall deem fit; and any sum awarded for damage to be paid to the party injured. *Id. s.* 17.

Appeal.] Parties aggrieved may appeal to the next sessions, giving to the justice fourteen days' notice of appeal, with the cause and matter thereof. *Id. s.* 20.

CERTIORARI.

In what cases, generally.] The writ of certiorari is a writ issuing from the crown side of the court of Queen's Bench, directed to the justices at sessions, or to justices out of sessions, or the judges of inferior courts, requiring them to certify to that court some indictment, conviction, order of sessions, order of justices, or other matter of a judicial nature, depending before them, in order that the same may be disposed of there in such manner as to the court shall seem fit. By means of this writ, the court of Queen's Bench exercises its superintending jurisdiction over those inferior tribunals, and quashes or confirms their acts, or assumes to itself the cognizance of matters which, from circumstances, can be proceeded upon with more certainty of justice to the parties before that court than before the inferior tribunal. And this jurisdiction is so inherent in the court of Queen's Bench that nothing can deprive it of the right to issue this writ, or parties of their right to apply for it, but the express words of an Act of Parliament, forbidding them to do so. *R.* v. *Abbott*, 2 *Doug.* 553, *n.* 113. *See R.* v. *JJ. of Lindsey*, 14 *Law J.* 151, *m.* On the other hand, where the certiorari is expressly taken away by statute, the court of Queen's Bench will not interfere by mandamus, *R.* v. *JJ. of Yorkshire*, 1 *Ad.* & *E.* 563, or in any other manner, directly or indirectly, to enable a defendant to remove the proceedings before them; *R.* v. *Young*, 2 *T. R.* 472. *R.* v. *Casson*, 3 *D.* & *R.* 136; whether there be any other mode of appeal provided by the statute or not; *R.* v. *JJ. of St. Alban's*, 3 *B.* & *C.* 698; unless in cases where it appears clearly that the justices have proceeded in a matter over which they had no jurisdiction whatever. *R.* v. *JJ. of Somersetshire*, 5 *B.* & *C.* 816. *R.* v. *JJ. of W. R. Yorkshire*, 5 *T. R.* 629. *R.* v. *Sheffield and Manchester Railway Co.*, 9 *Law J.* 13, *qb.* Even where, upon an appeal against a conviction, the justices confirmed the conviction, subject to a case for the opinion of the court of King's Bench,—the court held that no certiorari could issue, as by a clause in the Act, on which the conviction was framed, it was provided that no "rate, proceeding, conviction, matter or thing" should be removed by certiorari or any other process whatsoever into his Majesty's courts of record at Westminster. *R.* v. *JJ. of Middlesex*, 8 *D.* & *R.* 117.

But the crown is not bound by these clauses taking away the certiorari, unless the Act show, either expressly or by necessary implication, that the legislature so intended it. *R.* v. *Davies*, 5 *T. R.* 626. *R.* v. *Bodenham*, *Cowp.* 78. *R.* v. *Cumberland*, 6 *T. R.* 194, 3 *B.* & *P.* 154. And this rule is not confined to cases where the crown has an actual interest, but extends to

all prosecutions in the name of the Queen. *R.* v. *Boulthee*, 4 *Ad.* & *El.* 498. *See Arch. Pr. Cr. Off.* 153.

To remove indictments.] A certiorari lies to remove an indictment from sessions, and all other inferior criminal jurisdictions, before verdict, if the party applying to remove it satisfy the court or a judge, by affidavit, of the necessity for the removal, either by reason of difficult points of law being likely to arise (stating specifically the grounds on which the difficulties will occur, *R.* v. *Joule*, 5 *Ad.* & *El.* 539,) or that a fair and impartial trial cannot be had in the court below, or the like. *See R.* v. *Bromhead*, 2 *Dowl. N. C.* 715. And this affidavit must be made, not only where the defendant makes the application; *R.* v. *Eaton*, 5 *T. R.* 89, *per Buller, J.* *R.* v. *Lewis*, 3 *Burr.* 2458, *per Ld. Mansfield, C. J.*; but also where it is made by the prosecutor. 5 & 6 *W.* 4, *c.* 33. After verdict, however, the court will not grant the writ; *R.* v. *Jackson*, 6 *T. R.* 145. *R.* v. *Oxfordshire*, 13 *East*, 411. *R.* v. *Christian et al.*, 12 *Law J.* 26. *R.* v. *Whiston et al.*, 2 *Dowl. N. C.* 408; nor, after the defendant has pleaded guilty or otherwise confessed the charge; *R.* v. *Gwynn*, 2 *Burr.* 749; and after judgment, an indictment can be removed only by writ of error. *R.* v. *Seton*, 7 *T. R.* 373. *R.* v. *Pennegoes and Mackynlleth* 1 *B.* & *C.* 142. *See Arch. Pr. Cr. Off.* 157, 169.

To remove convictions.] Summary convictions by magistrates may be removed by certiorari into the court of Queen's Bench, for the purpose of moving that court to quash them, for errors appearing upon the face of them. *See R.* v. *Liston*, 5 *T. R.* 338. In this respect the certiorari is in the nature of a writ of error, except that a special application must be made to the court or a judge for it; and they will not grant the writ, until they are first satisfied that the alleged defect appears upon the face of the conviction, even in cases where there is no appeal, and no other mode of having the decision of the magistrate reviewed except by certiorari. *R.* v. *JJ. of Cashiobury*, 3 *D.* & *R.* 35. Where an application was made for a certiorari to remove a conviction, which upon the face of it appeared to be for a common assault, but it was alleged to be, in fact, for an assault to commit a felony, which by 9 Geo. 4, c. 31, s. 29, (*see ante*, p. 135) was not an offence within the jurisdiction of the justices: the court refused the writ; and Ld. Tenterden, C. J., said, that "the conviction here shows a jurisdiction upon the face of it, and I should feel great difficulty, in any such case, in granting the writ;" but the circumstances mentioned in the depositions before the convicting magistrates, even if believed by them, did not prove clearly an intention to commit a felony; and as the statute made the magistrates the judges whether such an attempt was proved or not, and they had negatived it

court will intend that it was quashed for defect of form, and will confirm the order of sessions : but if the order of justices be good upon the face of it, then if the sessions confirm it, the court of course will confirm the order of sessions; or if the sessions quash it, the court will intend that it was quashed upon the merits, and confirm the order of sessions. *South Cadbury* v. *Braddon*, 2 *Salk.* 607, *Set.* & *Rem.* 172. *See Arch. Pr. Cr. Off.* 179.

When and how removed.] No writ of certiorari shall be granted, to remove any conviction, judgment, order or other proceedings, had or made before any justice or justices of the peace, or the general or quarter sessions, unless such certiorari be moved and applied for within six calendar months next after such conviction, judgment, order or other proceedings shall be so had or made. 13 *G.* 2, *c.* 18, *s.* 5. *And see Anon.* 13 *Law J.* 28, *m.* This Act does not bind the crown; and therefore if the attorney-general apply for the certiorari on the part of the crown, the court will grant it at any time. *R.* v. *James*, 1 *East*, 303, *n.* Nor, does the Act apply to indictments; but a certiorari to remove an indictment must be sued out and delivered before verdict; *ante*, p. 251, *and R.* v. *Higgins*, 5 *Ad.* & *El.* 554; and in misdemeanors it must be delivered before the jury are sworn, 60 *G.* 3, *c.* 4, *ss.* 3, 5, but it may be applied for and sued out even before the finding of the indictment. *Id. s.* 4. *See Arch. Pr. Cr. Off.* 184.

Also by stat. 13 G. 2, c. 18, s. 5, "no writ of certiorari shall be granted or issued, to remove any conviction, judgment, order or other proceeding had or made by or before any justice of the peace or general or quarter sessions, unless it be duly proved upon oath, that the party or parties suing for the same hath or have given six days' notice thereof in writing to the justice or justices, or to two of them (if so many there be), by and before whom such conviction, judgment, order or other proceeding shall be so had or made, to the end that such justice or justices, or the parties therein concerned, may show cause, if he or they shall so think fit, against the issuing or granting such certiorari." *See R.* v. *St. Mary Whitechapel*, 2 *Dowl. N. C.* 964. This does not extend to indictments; *R.* v. *Battams*, 1 *East*, 298; nor is the crown bound by it. *Supra. See Arch. Sess. Pr.* 43. If this notice be signed by the attorney of the party, it will be sufficient. *R.* v. *Abergele*, 5 *Ad.* & *El.* 797. *R.* v. *JJ. of Lancashire*, 9 *Law J.* 9, *qb.* 11 *Ad.* & *El.* 144. *R.* v. *JJ. of Wilts*, 10 *Id.* 25, *m. R.* v. *Darton*, 2 *D.* & *Lo.* 498. But it must state the name of the party by whom the writ is intended to be issued. *R.* v. *JJ. of Lancashire*, 4 *B.* & *A.* 289. *And see R.* v. *JJ. of Cambridgeshire*, 3 *B.* & *Ad.* 887, 1 *Law J.* 97, *m. R.* v. *JJ. of Shrewsbury* & *Salop*, 10 *Law, J.* 8, *m. R.*

v. *Cartworth*, 13 *Law J.* 26. See fully upon this subject, with the necessary forms of the notice and the affidavit of service, *Arch. Pr. Cr. Off.* 180—183.

Upon a defendant obtaining a certiorari to remove an indictment, he must, before the allowance thereof (if not in custody for want of bail), enter into a recognizance either before one of the judges of the court of Queen's Bench, or a justice of the peace of the county or place in which the offence is charged to have been committed, or in which such person shall reside, in such sum as the court or a judge by indorsement on the writ shall order and direct. 5 & 6 *W.* 4, *c.* 33, *s.* 2. And if the indictment be against several, and the certiorari be sued out upon the application of only one, the indictment will thereby be removed as against all, although one alone enter into the recognizance. *R.* v. *Boxall et al.*, 4 *Ad. & El.* 513. This recognizance must be conditioned to appear and plead to the said indictment in the court of Queen's Bench at the return of the writ, and at the defendant's own costs and charges to cause and procure the issue joined upon the indictment, or any plea, relating thereto, to be tried at the next assizes after the return of the certiorari, or, in London or Middlesex, in the next term after the granting of the writ or at the sittings after such term, or at any other time the court may appoint for the trial, and to give due notice of trial to the prosecutor or his clerk in court. 5 & 6 *W. & M. c.* 11, *s.* 2. *See R.* v. *Hawdon et al.*, 1 Q. *B.* 464. If the recognizance be given, it shall be certified to the court of Queen's Bench, together with the certiorari and indictment; if not given, the sessions may proceed to trial on the indictment. *Id.* And if the defendant be convicted, the prosecutor, if he be the party grieved, or a justice or officer whom it may concern as such to prosecute, shall be entitled to his costs from the defendant, to be recovered by attachment. *Id. s.* 3. *See Arch. Pr. Cr. Off.* 161.

As to the recognizances required upon the removal of convictions, orders, &c.: By stat. 5 G. 2, c. 19, after making (in sect. 1) provision for the amendment of such judgments and orders as justices of the peace are by law empowered to give or make, it is enacted by sect. 2, that no certiorari shall be allowed to remove any such judgment or order, unless the party or parties prosecuting such certiorari, before the allowance thereof, shall enter into a recognizance with sufficient sureties, before one or more justice or justices of the peace for the county or place, or before the justices at their general quarter sessions or general sessions, where such judgment or order shall have been given or made, or before any of the judges of the court of King's Bench, in the sum of 50*l.* with condition to prosecute the same at his or their own costs and charges with effect, without any wilful or affected delay, and to pay the party or parties, in whose favour and for whose benefit

such judgment or order was given or made, within one month after the said judgment or order shall be confirmed, their full costs and charges to be taxed according to the course of the court where such judgments or orders shall be confirmed. The word "judgment" here includes convictions. If no such recognizance be entered into, the justice may proceed and make such further orders as if no certiorari had issued. *Id.* By sect. 3, this recognizance shall be certified to the court of Queen's Bench, with the certiorari and order, &c. and the party entitled to his costs may have his remedy there for the same by attachment. The party suing out the certiorari must join in the recognizance. *R.* v. *Boughey*, 4 *T. R.* 281. And he and the sureties must enter into one entire recognizance for 50*l.*; it will not be sufficient that each of the sureties enter into a recognizance in 25*l.* each. *R.* v. *Dunn*, 8 *T. R.* 217. This statute, however, does not apply to writs of certiorari sued out by a prosecutor. *R.* v. *Spencer*, 9 *Ad. & El.* 485. *See Arch. Pr. Cr. Off.* 185.

How returned.] If the certiorari be to remove an indictment or other matter from the sessions, in which case it is directed to the justices generally, it is returned by the chairman of the sessions; if it be to remove a conviction or order made by magistrates out of sessions, and of course directed to them individually, the return must be made by them. And in the latter case, if the magistrate have already transmitted the conviction to the sessions, he may state that in his return, and certify a copy of it. *R.* v. *Eaton*, 2 *T. R.* 285. A conviction may be returned in a more formal shape than that in which it was first drawn: *R.* v. *Barker*, 1 *East*, 186: an order cannot. *R.* v. *JJ. of Cheshire*, 5 *B. & Ad.* 439.

The return is thus made: first indorse upon the writ these words: "*The execution of this writ appears in a schedule to this writ annexed: The answer of R. B. esquire,*" [and if the writ be to the sessions, add, "*and the justices assigned to keep the peace in and for the county of* ——"]. Then write a schedule on parchment, in this form: *County of* ——, *to wit: I, R. B., esquire,* [*chairman of the quarter sessions of the peace for the said county of* ——, *and*] *one of the justices of our said sovereign Lady the Queen, assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses and misdemeanors in the said county, by virtue of this writ to me delivered, do under my seal* [*for myself and other the justices assigned to keep the peace in and for the said county,*] *humbly certify unto Her Majesty, in her court of Queen's Bench, the* [*indictment*] *of which mention is made in the said writ, together with all things touching in the same. Given at* —— *the* —— *day of* ——, *in the* —— *year of the reign of Queen Victoria.* *R. B.* [*seal.*]

Then make out the record of the indictment, together with the caption, as directed in *Arch. Pr. Qu. Sess.* 31, or the conviction or order, &c. upon parchment; inclose it in the schedule, and annex them to the writ; then transmit them and the recognizance to the crown-office of the court of Queen's Bench.

Where a certiorari issued, to remove an order of sessions made upon an appeal against an order of removal, and the sessions returned not only their order, but also the order of removal, examination and notice of chargeability: the court held that it was irregular to return more than the order of sessions, and that the return therefore ought to be quashed. *R.* v. *Abergele*, 8 *Ad. & El.* 394. *See R.* v. *Ardsley*, 5 *Q. B.* 163.

CHALLENGE TO FIGHT.

It is a very high offence to challenge another, either by word or letter, to fight a duel,—or to be the messenger of such a challenge, 1 *Hawk. c.* 63, *s.* 3,—or even barely to provoke another to send a challenge or to fight, by dispersing letters to that purpose, full of reflections, and insinuating a desire to fight, &c. *Id. R.* v. *Phillips*, 6 *East*, 464. *R.* v. *Rice*, 3 *East*, 581. This offence is punishable by fine or imprisonment, or both.

It is also a misdemeanor at common law, punishable in like manner, to provoke a man to any other breach of the peace, either by letter or otherwise.

Challenging or provoking a person to fight, on account of money won at play, was formerly punishable with imprisonment for two years, and a forfeiture of goods and chattels, by stat. 9 Ann, c. 14, s. 8; but this part of the statute has since been repealed, by stat. 9 G. 4, c. 31, s. 1.

Commitment for provoking to fight, or to send a challenge; —*On* ——, *at* ——, *wickedly, wilfully and maliciously did utter, pronounce, declare and say to and in the presence and hearing of one C. D., certain provoking and scandalous words, with intent to instigate, incite and provoke the said C. D. to* [*fight a duel with and against him the said A. B.*, or, *to send a challenge to him the said A. B. to fight a duel with and against him the said C. D.*] *And you the said keeper*, &c.

Commitment for sending a challenge:—*On* ——, *at* ——, *wickedly, wilfully and maliciously did write, send and deliver to one C. D., a certain letter and paper writing containing a challenge to fight a duel with and against him the said A. B. And you the said keeper*, &c.

CHAPEL.

See "Burglary," "Burning."

CHEATING.

See "False Pretences."

CHILD STEALING.

"If any person shall maliciously, either by force or fraud, lead or take away, or decoy or entice away, or detain, any child under the age of ten years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong; or if any person shall, with any such intent as aforesaid, receive or harbour any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away or detained, as hereinbefore mentioned:" felony, transportation for seven years; or imprisonment with or without hard labour for not more than two years, and whipping. 9 *G.* 4, *c.* 31, *s.* 21.

Commitment:—*On —— at ——, a certain male child, under the age of ten years, to wit, of the age of eight years, named E. D., the son of C. D., then and there feloniously and maliciously by force and fraud, did lead, take and carry away, with intent* [*to deprive the said C. D., the parent of the said child, of the possession of the said child;* or *with intent one woollen cloth waistcoat of the value of ——, and one pair of woollen cloth trowsers of the value of ——, upon and about the person of the said child then and there being, and the property of the said C. D., feloniously to steal, take and carry away*]; *against the form of the statute in such case made and provided. And you the said keeper*, &c.

It is provided, however, that no person claiming to be father of an illegitimate child, or to have any right to the possession of it, shall be prosecuted under this Act, for getting possession of such child, or taking it out of the possession of the mother or other person. *Id.*

CHIMNEY SWEEPERS.

See "Apprentices."

CHURCH.

See "Burglary," "Burning."

CHURCH-RATE.

Order to pay.] "If any one, duly rated to a church-rate or chapel rate, the validity whereof has not been questioned in any ecclesiastical court, shall refuse or neglect to pay the same sum at which he is so rated, it shall and may be lawful for any one justice of the peace of the same county, riding, city, liberty or town corporate, where the church or chapel is situated, in respect whereof such rate shall have been made, upon the complaint of any churchwarden or churchwardens, chapelwarden or chapelwardens, who ought to receive and collect the same, [or of any one churchwarden, although there be two or more, *R.* v. *Fenton et al.*, 1 Q. B. 480,] by warrant under the hand and seal of such justice, to convene before any two or more such justices of the peace, any person so refusing or neglecting to pay such rate, and to examine upon oath into the merits of the said complaint, and by order under their hands and seals to direct the payment of what is due and payable in respect to such rate, so as the sum ordered and directed to be paid as aforesaid do not exceed 10*l.*, [or 50*l.* in the case of Quakers, *Id. s.* 5, *and* 5 & 6 *W.* 4, *c.* 74,] over and above the reasonable costs and charges, to be ascertained by such justices." 53 *G.* 3, *c.* 127, *s.* 7. If the rate have been made at a vestry-meeting, called by persons who are churchwardens *de facto*, though irregularly appointed, the parties are thereby "duly rated" within the meaning of this Act, so as to give the justices jurisdiction; and these churchwardens *de facto* may proceed to recover the amounts from the rate-payers under this statute. *R.* v. *St. Clement's*, 12 *Ad.* & *El.* 177. So, if the churchwardens have commenced a suit in the ecclesiastical court for the tithes, but have abandoned it before appearance, they may afterwards proceed before a justice of the peace against the same party, in the manner here pointed out. *Id.* But if the validity of the rate, or the liability of the person, from whom it is demanded, to pay the same, be disputed, and the party disputing the same give notice thereof to the

justices, the justices shall forbear giving judgment thereupon. 53 *G.* 3, *c.* 127, *s.* 7. *See R.* v. *Sillifant*, 4 *Ad.* & *El.* 354. It is not necessary that the validity of the rate, however, should be disputed in the ecclesiastical court, to prevent the justices from deciding in the matter; it is sufficient that the party states to them or gives them notice that he disputes the validity of the rate, *R.* v. *Milnrow*, 5 *M.* & *S.* 248, provided he also states his reasons for doing so, in order that the justices may judge whether his objection be *bonâ fide*. *R.* v. *Wrottesley*, 1 *B.* & *Ad.* 648. And where the rate, or the liability of the party charged, is not disputed, the above Act seems to give the justices exclusive jurisdiction. *Richards* v. *Dyke et al.* 3 Q. *B.* 256. The order may be in the form following:—

County of } *Whereas complaint hath been made to us G. H. & I. K., esquires, two of Her Majesty's justices of the peace in and for the county aforesaid, by C. D. & E. F., churchwardens of the parish of ——, in the said county of ——, that A. B., of ——, in the said parish of ——, in the county aforesaid, who hath been duly rated to a church-rate for the said parish, made on the —— day of ——, the validity whereof hath not been questioned in any ecclesiastical court, hath refused* [or *neglected*] *to pay the sum of ——, at which he is rated in and by the said rate, and that the same is still due and unpaid: now we the said justices* (*being neither of us patron of the church of the said parish of ——, nor in any way interested in any of the rights, dues or other payments belonging to the said church*), *having in the presence of the said A. B. duly examined upon oath into the merits of the said complaint, do find that the sum of —— is justly due and owing from the said A. B. unto the said C. D. & E. F., as churchwardens as aforesaid, being the sum at which the said A. B. is rated in and by the rate aforesaid, and we do hereby order and direct the said A. B. to pay unto the said C. D. & E. F. the said last-mentioned sum, together with the sum of ——, for their reasonable costs and charges in this behalf by us ascertained. Given under our hands and seals this —— day of ——, &c.*

to wit.

How enforced.] Upon refusal or neglect of such party to pay, according to such order, within seven days after the amount shall have been legally demanded of him, his goods and chattels may, by warrant under the hand and seal of any one of such justices be distrained for it, not only in the district, parish, &c., for which the rate was made, but within any other district, parish, &c., within the same county or jurisdiction; and if sufficient distress be not found within the same county, &c., then upon oath made thereof before a justice of any other county, &c., in which goods of the party shall be found, and his indorsing his name upon the warrant, the goods of the party may be distrained in such other county, &c., and sold, and the surplus rendered to the party, first deducting there-

from the necessary charges of distraining, to be allowed by the justice. 54 *G.* 3, *c.* 170, *s.* 12. *And see* 53 *G.* 3, *c.* 127, *s.* 7.

Appeal.] Any person finding himself aggrieved by the judgment given by two or more such justices, as above-mentioned, may appeal to the next general quarter sessions for the county, &c. wherein the church or chapel shall be situate, with respect to which the rate shall have been made; and if such judgment be affirmed, it shall be with costs against the appellant, to be recovered by distress and sale: provided that in case of appeal, no warrant of distress shall be issued until after the appeal be determined. 53 *G.* 3, *c.* 127, *s.* 7. It is not necessary in this case to give notice of appeal to the justices making the order; it is sufficient to give it to the churchwardens. *R.* v. *Justices of Staffordshire*, 4 *Ad. & El.* 842.

CLERKS.

See "Embezzlement." "Larceny."

CLERKS TO MAGISTRATES.

See "Justices."

CLERGYMEN, ARRESTING.

"If any person shall arrest any clergyman upon any civil process, while he shall be performing divine service, or shall, with the knowledge of such person, be going to perform the same, or returning from the performance thereof:" misdemeanor, fine or imprisonment, or both. 9 *G.* 4, *c.* 31, *s.* 23.

COALS.

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2. *Sale of, within 25 miles of the Post-Office*, 262.

1. *Sale of Coals, generally.*

All coals, slack, culm, and cannel of every description, shall

be sold by weight and not by measure; and every person who shall sell coals, slack, culm, or cannel of any description by measure and not by weight, shall, on conviction, be liable to a penalty not exceeding 40*s.* for every such sale. 5 & 6 *W.* 4, *c.* 63, *s.* 9. *See "Weights and Measures," post.*

2. *Sale of coals, within* 25 *miles of the Post-Office.*

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Coals to be sold by weight.] "All coals, cinders, and culm, which shall be sold from and out of any ship or vessel in the port of London, or at any place within the cities of London and Westminster, or within the distance of 25 miles from the General Post-Office in the city of London, shall be sold by weight and not by measure; 1 & 2 *W.* 4, *ch.* lxxvi. *s.* 43; and shall be delivered in sacks, containing 112 or 224lbs. *Id. s.* 48, unless the buyer desire them to be delivered in bulk. *Id. s.* 39.

Weighing of coals when delivered in bulk.] When coals are delivered in any cart, &c., in bulk as aforesaid, the weight of such cart or other carriage, as well as of the coals contained therein, shall be previously ascertained by a weighing-machine fixed for that purpose on the wharf or place from which the coals shall be brought; and the seller's ticket shall in such case state the weight of the cart or other carriage, as well as the weight of the coals contained therein: and if any sellers or dealers in coals shall carry or deliver to the purchaser or purchasers, by any cart or other carriage, any quantity of coals exceeding 560lbs. in bulk, or without having a weighing-machine fixed up on his wharf or place, or without having previously ascertained by such weighing-machine the weight of the cart

or other carriage, and the weight of the coals contained therein, such seller or dealer shall forfeit any sum not exceeding 50*l*. *Id. s.* 49.

Carman to weigh.] The carman or driver of any waggon or other carriage, in which any coals exceeding 560lbs. shall be carried in bulk, for delivery to the purchaser thereof, from any lighter, &c. or wharf, &c. within London and Westminster, or within the distance of 25 miles from the Post-Office aforesaid, shall (in case he shall be required so to do by the purchaser or his servant, or other person acting on his behalf), weigh the waggon or other carriage, with the coals therein, at any public weighing-machine for carts or carriages which may be situate on the road between the place from which the coals shall be brought and the place of delivery, or at any point within the distance of 100 yards from any part of such road; and such carman or driver is also hereby directed (in case he shall be required so to do by the purchaser, or other person as aforesaid), to weigh in like manner the waggon or other carriage, without the coals, at any public weighing-machine for carts or carriages which may be situate as aforesaid: and if any such carman or driver shall neglect or refuse, when so required, to weigh the waggon or other carriage, either with or without the coals, at any public weighing-machine for carts and carriages which may be situate as aforesaid, he shall forfeit any sum not exceeding 10*l*.: provided always, that no carman or driver shall be compelled to weigh the waggon, &c, without the coals, until after the same shall have been delivered; and that no such carman, &c. shall be obliged to go back to any such weighing-machine, for the purpose of weighing the waggon or other carriage, either with or without the coals, after he shall have passed the same. *Id. s.* 50.

Penalty for short weight of coals in bulk.] If in any case where any coals shall be delivered in bulk to the purchaser, as aforesaid, a less quanity shall be delivered than shall be expressed in the ticket to be delivered therewith, the seller shall forfeit any sum not exceeding ten pounds; and if the deficiency shall exceed two hundred and twenty-four pounds, the seller or sellers shall forfeit any sum not exceeding fifty pounds. *Id. s.* 51.

If any carman or driver of any waggon or other carriage (not belonging to the purchaser) laden with coals for sale, or to be delivered to the purchaser thereof within the limits aforesaid, shall not have placed in, on, or under his waggon or carriage, a perfect weighing-machine, marked at Guildhall, London, by the proper officer there, he shall forfeit any sum not exceeding ten pounds; and the seller or sellers of or dealer

or dealers in, or carrier or carriers of such coals shall forfeit any sum not exceeding twenty pounds. *Id. s.* 52.

Weighing of coals in sacks.] The carman or driver of any waggon or other carriage, in which coals shall be carried in sacks for delivery to the purchaser, within the limits aforesaid, shall weigh, if he shall be required so to do, any one or more of the sacks contained in any such waggon or other carriage, which may be chosen by the purchaser of the said coals, or his servant, or other person acting on his behalf, with the coals therein, and also afterwards to weigh in like manner such sack without any coals therein. *Id. s.* 54.

Preventing the weighing of coals in sacks.] If any carman or driver of any waggon or other carriage, in which coals shall be carried in sacks for delivery to the purchaser thereof, within the limits aforesaid, shall neglect or refuse to weigh by the said machine any such sack or sacks of coals in manner hereinbefore directed, when thereunto required by the purchaser or his servant, or other person;—or if any such carman or driver shall drive away, or permit or suffer the said waggon or other carriage to be driven away, without weighing in manner herein directed the said sack or sacks of coals;—or shall hinder, obstruct, or otherwise prevent the purchaser of such coals, or his servant, or any other person whomsoever, from examining the said machine, or weighing all or any of the sacks of coals in such his waggon or other carriage:—such carman or driver shall forfeit any sum not exceeding twenty pounds nor less than five pounds. *Id. s.* 55.

Also, if any purchaser or his servant, or other person acting for him, who shall require any sack of coals to be weighed, shall find the coals therein to be deficient in weight, and shall signify to the carman or other person attending such waggon or other carriage, his desire to have all the coals contained in such waggon or other carriage, or any part of such coals, weighed or re-weighed in the presence of some constable or other indifferent and credible person, then and in every such case such carman or driver shall remain at or before the house or other premises of the purchaser with such coals, and the waggon or other carriage, until such coals are weighed; and if any such carman or driver shall drive away, or permit or suffer to be driven away, such waggon or other carriage, before the coals contained therein shall be weighed, without the consent of the purchaser or his servant, or such other person as aforesaid, such carman or driver shall forfeit any sum not exceeding twenty pounds. *Id. s.* 56.

Penalty for not weighing or for short weight.] Such pur-

chaser shall procure the attendance of some constable or other indifferent and credible person, to be present at the weighing of such coals; and all the said sacks, both with and without the coals therein, shall accordingly be weighed with the said machine by the carman or other person attending such waggon or other carriage in the presence of the purchaser of the said coals or his servant if he attend, and of such constable or other person; and in case such purchaser or his servant shall not attend, such carman or other person shall proceed in the weighing of such sacks in his absence; "and in case such carman or other person shall refuse or neglect to weigh such sacks, or any of them, in manner aforesaid, he shall forfeit and pay for such offence any sum not exceeding ten pounds; and the constable, police officer, or any other person who may be present, may weigh the said sacks or any of them, as aforesaid; and in case upon the weighing of any such sack it shall happen that any sack or sacks shall not contain either 112 pounds or 224 pounds net of coals, as the case may be," penalty on the seller, not exceeding five pounds. *Id. s.* 57.

Weighing quantities less than 560lbs.] If any seller or dealer in coals shall deliver to the purchaser thereof, within the limits aforesaid, any quantity of coals less than 560lbs., or the quantity of 560lbs., without previously weighing the same, and also, if required by such purchaser or his servant, in the presence of such purchaser or his servant: then and in every such case such seller or dealer shall for every such offence forfeit and pay any sum not exceeding five pounds. *Id. s.* 58.

Selling one kind of coals for another.] "If any seller of or dealer in coals shall knowingly sell one sort of coals for and as a sort which they really are not, within the said port of London, or at any place within the cities of London and Westminister, or within the distance of twenty-five miles from the Post-office aforesaid:" penalty ten pounds for every ton of coals so sold, and so in proportion for any smaller quantity; Provided always, that no seller or sellers of or dealer or dealers in coals shall be subject to such penalty, for or in respect of any number of tons exceeding twenty-five tons for the same offence. *Id. s.* 45.

Ticket to be sent with coals.] With any quantity of coals exceeding 560lbs. delivered from any lighter, &c. or from any wharf, &c. within the cities of London and Westminster, or within the distance of 25 miles from the Post-office aforesaid. the seller shall cause to be delivered to the purchaser thereof, or to his agent or servant, immediately on the arrival of the waggon, &c. in which such coals shall be sent, and before any of such coals shall be unloaded, a ticket in the form given by

the statute: And in case any such seller do not cause to be delivered such ticket as aforesaid to the purchaser or his servant, before any part of such coals are unloaded, he shall forfeit any sum not exceeding twenty pounds:—and in case the carman, driver of, or other person attending any such waggon or other carriage, &c., to whom any such ticket shall have been given by or by the orders of the seller, in order to be delivered to the purchaser, shall refuse or neglect to deliver such ticket to the purchaser or his servant, before any part of such coals shall be unloaded, such driver, &c. shall forfeit any sum not exceeding twenty pounds: provided always, that coals delivered to any seller or dealer in coals, or to any person or persons purchasing the same at the coal market, may be delivered without any such paper or ticket. *Id. s.* 47.

Proceedings for penalties.] All penalties by this Act imposed, not exceeding 25*l.*, shall be sued for within one calendar month after the offence committed; and such penalties shall be levied and recovered before any justice of the peace for the county, city, or place, where the offence shall be committed; and such justice is hereby required, upon information to him made, to grant a summons or warrant to bring before him such offender or offenders; and if, on conviction, such penalty shall not be forthwith paid, the same shall be levied by distress and sale of the goods of the offender, by warrant under the hand and seal of such justice; and for want of distress, or in case the penalty shall not be forthwith paid, such justice may commit the offender for any time not exceeding six calendar months, unless such penalty, and all reasonable charges attending the recovery thereof, shall be sooner paid; and all such penalties, when recovered, shall be paid into the hands of the overseers of the poor of the parish, township or place where the same shall have been incurred, for the use of the poor of such parish, township, or place. *Id. s.* 77.

Witnesses may be summoned, and shall attend under the penalty of 25*l.* *Id. s.* 83.

The justice before whom any such conviction shall take place, if he shall think fit, may order any part, not exceeding one half, of such penalties to be paid to the informer, or other persons assisting in the apprehension of the offender. *Id. s.* 79.

The justices also may direct all or any part of the reasonable expenses of any constable or other witness, and compensation for time and trouble, to be paid either by the offender or the complainant; and the sum so ordered may be recovered, together with the penalty or without, in the same manner as any penalty is directed to be recovered by this Act. *Id. s.* 80.

Conviction.] The conviction may be drawn according to the following form (*Id. s.* 87):

BE it remembered, that on the —— day of ——, in the year of our Lord ——, A. B. is convicted before me —— one of Her Majesty's justices of the peace for the —— [here specify the offence, and the time and place when and where committed, as the case may be], *contrary to an Act of parliament made in the second year of the reign of King William the Fourth, entitled* [here insert the title of the Act.*] *Given under my hand and seal the day and year first above written.* *C. D.*

Penalties by carmen, how recovered.] Where any carman or driver shall be convicted of any offence against this Act, and the penalty shall not be forthwith paid, the same shall be paid by the seller by whom such carman or driver shall have been employed at the time when such offence was committed, and shall be recovered by such ways and means as are hereinbefore directed with respect to any penalty imposed by this act: provided that such carman or driver shall be liable to repay to such seller, the amount of such penalty and the costs attending the same; and in case of non-payment thereof, upon demand, and oath of the payment thereof, and that the same and the costs thereof have not been repaid by such carman or driver, the amount of such penalty and costs shall be recovered in like manner as any penalty is directed to be recovered by this Act. *Id. s.* 81.

Appeal.] Any person so convicted as before mentioned, may appeal to the justices of the peace assembled at the next general quarter sessions for the county, &c., on giving immediate notice of such appeal, and finding sufficient security to the satisfaction of such justice or justices for prosecuting the said appeal with effect, and abiding the determination of the court therein; and such justice at sessions shall hear and determine the matter, and may award costs to either party. *Id. s.* 82.

Certiorari, &c.] No proceedings had in pursuance of this act shall be quashed or vacated for want of form only, or be removed by certiorari. *Id. s.* 82.

COAL MINES.

See "Larceny." "Malicious Injuries."

* "An Act for regulating the vend and delivery of coals, in the cities of London and Westminster, and in certain parts of the counties of Middlesex, Surrey, Kent, Essex, Hertfordshire, Buckinghamshire, and Berkshire."

COGNOVIT.

See "Personating."

COIN.

Counterfeiting gold or silver coin, p. 268.
Gilding or silvering coin, p. 268.
Impairing the coin, p. 269.
Buying, selling, or importing counterfeit coin, p. 269.
Uttering counterfeit coin, p. 270,
Uttering, and having other base coin in possession, p. 270;
Uttering twice within ten days, p. 271.
Uttering after a former conviction, p. 271.
Having such coin with intent to utter it, p. 271.
Counterfeiting, &c. copper coin, &c. p. 272.
Uttering base copper coin, p. 272.
Making, or having, &c. coining tools, p. 273.
Conveying tools, &c. out of the mint, p. 273.
Search warrant for base coin, tools, &c. p. 274.
No traverse, in misdemeanors under this Act, p. 274.
Evidence of coin being counterfeited, p. 274.
Accessories, &c. p. 274.

Counterfeiting gold or silver coin.] "If any person shall falsely make or counterfeit any coin, resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years; and every such offence shall be deemed to be complete, although the coin so made or counterfeited shall not be in a fit state to be uttered, or the counterfeiting thereof shall not be finished or perfected. 2 *W.* 4, *c.* 34, *s.* 3.

Commitment:—*On* —— *at* ——, *feloniously did falsely make and counterfeit ten pieces of coin,* [*resembling*] *and apparently intended to resemble and pass for certain of the Queen's current* [*gold*] *coin called* [*sovereigns*]; *against the form of the statute in such case made and provided. And you the said keeper,* &c.

Gilding or silvering coin.] "If any person shall gild or silver, or shall, with any wash or materials capable of producing the colour of gold or of silver, wash, colour, or case over, *any coin*

whatsoever resembling or apparently intended to resemble or pass for any of the King's current gold or silver coin;—or if any person shall gild or silver, or shall, with any wash or materials capable of producing the colour of gold or of silver, wash, colour, or case over, *any piece of silver or copper* or of coarse gold or silver, or of any metal or mixture of metals respectively, being of a fit size and figure to be coined, and with intent that the same shall be coined, into false and counterfeit coin resembling or apparently intending to resemble or pass for any of the King's current gold or silver coin;—or if any person shall gild, or shall, with any wash or materials capable of producing the colour of gold, wash, colour, or case over, any of the King's current *silver coin*, or file or in any manner alter such coin, with intent to make the same resemble or pass for any of the King's current gold coin;—or if any person shall gild or silver, or shall, with any wash or materials capable of producing the colour of gold or of silver, wash, colour, or case over, any of the King's current *copper coin*, or file or in any manner alter such coin, with intent to make the same resemble or pass for any of the King's current gold or silver coin:" felony, transportation for life or for not less than seven years, or imprisonment with or without hard labour for not more than four years. *Id. s.* 4.

Commitment:—*On —— at ——, feloniously did gild a certain piece of coin,* [*resembling and*] *apparently intended to resemble certain of the Queen's current gold coin called a half-sovereign; against the form of the statute in such case made and provided. And you the said keeper,* &c. Commitments for the other offences in the above section, may readily be framed from this form.

Impairing the coin.] "If any person shall impair, diminish, or lighten any of the King's current gold or silver coin, with intent to make the coin so impaired, diminished, or lightened pass for the King's current gold or silver coin:" felony, transportation for not more than fourteen years nor less than seven, or imprisonment with or without hard labour for not more than three years. *Id. s.* 5.

Commitment:—*On —— at ——, feloniously did impair, diminish, and lighten six pieces of the Queen's current* [*gold*] *coin called* [*sovereigns*], *with intent thereby then and there feloniously to make the said pieces of coin, so impaired, diminished, and lightened, to pass for the Queen's said current gold coin called sovereigns, as aforesaid; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Buying, selling, or importing counterfeit coin.] "If any person shall buy, sell, receive, pay, or put off, or offer to buy, sell, receive, pay, or put off, any false or counterfeit coin re-

sembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, at or for a lower rate or value than the same by its denomination imports or was coined or counterfeited for;—or if any person shall import into the United Kingdom from beyond the seas any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years. *Id. s.* 6.

Commitment:—*On —— at ——, feloniously did sell and put off five certain pieces of false and counterfeit coin,* [*resembling and*] *apparently intended to resemble and pass for certain of the Queen's current gold coin called sovereigns, at and for a lower rate and value than the same then and there by their denomination did import, and were coined and counterfeited for; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Uttering counterfeit coin.] "If any person shall tender, utter, or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit:" misdemeanor, imprisonment with or without hard labour for not more than one year. *Id. s.* 7.

Commitment:—*On —— at ——, unlawfully did utter and put off a certain piece of false and counterfeit coin,* [*resembling and*] *apparently intended to resemble and pass for certain of the Queen's current silver coin called a half-crown, he the said A. B. then and there knowing the same to be false and counterfeit; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Uttering, and having other base coin in possession.] "If any person shall tender, utter, or put off any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit, and such person shall, at the time of such tendering, uttering, or putting off, have in his possession, besides the false or counterfeit coin so tendered, uttered, or put off, one or more piece or pieces of false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin:" misdemeanor, imprisonment for not more than two years. *Id. s.* 7. Where two persons were acting in concert in uttering counterfeit coin, and one of them, when in company with the other, uttered a piece of base coin, knowing that his confederate had at the same time other base coin in his posses-

sion: it was holden that both might be convicted under this section. *R.* v. *Gerrish*, 2 *Moody & R.* 219. *R.* v. *Rogers*, 2 *Moody, Cr. Ca.* 85.

Commitment may be the same as the last form, adding, before the words "against the form," &c.—"*and he the said A. B. at the time he so uttered and put off the said false and counterfeit coin, having in his possession, besides the false and counterfeit coin so uttered and put off as aforesaid, five other pieces of the like false and counterfeit coin* [*resembling and*] *intended to resemble and pass for certain of the Queen's current silver money called shillings; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Uttering twice within ten days.] If any person shall, "either on the day of such tendering, uttering, or putting off, or within the space of ten days then next ensuing, tender, utter, or put off any more or other false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit:" misdemeanor, imprisonment with or without hard labour for not more than two years. *Id. s.* 7.

Commitment may be the same as the common form of commitment for uttering, as *ante*, p. 270, adding a statement of the second offence in like manner, thus: *and that the said A. B. afterwards and within the space of ten days thence next ensuing, to wit, on —— at ——, unlawfully did utter and put off a certain other piece of false and counterfeit coin resembling*, &c. as before.

Uttering after a former conviction.] "If any person, who shall have been convicted of any of the misdemeanors hereinbefore mentioned, shall afterwards commit any of the said misdemeanors:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years. *Id. s.* 7.

Commitment may be the same as for a common uttering, as *ante*, p. 270, but stating it to have been done "*feloniously*," adding, "*he the said A. B. having before then, on —— at ——, been duly convicted for having before then on —— at ——*, [stating the offence]; *against the form of the statute in such case made and provided. And you the said keeper*, &c."

Having such coin, with intent to utter it.] "If any person shall have in his custody or possession three or more pieces of false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same:" misdemeanor, imprisonment for not more than three years; and if "any person so

sembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, at or for a lower rate or value than the same by its denomination imports or was coined or counterfeited for;—or if any person shall import into the United Kingdom from beyond the seas any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years. *Id. s.* 6.

Commitment:—*On —— at ——, feloniously did sell and put off five certain pieces of false and counterfeit coin,* [*resembling and*] *apparently intended to resemble and pass for certain of the Queen's current gold coin called sovereigns, at and for a lower rate and value than the same then and there by their denomination did import, and were coined and counterfeited for; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Uttering counterfeit coin.] "If any person shall tender, utter, or put off any false or counterfeit coin, resembling or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit:" misdemeanor, imprisonment with or without hard labour for not more than one year. *Id. s.* 7.

Commitment:—*On —— at ——, unlawfully did utter and put off a certain piece of false and counterfeit coin,* [*resembling and*] *apparently intended to resemble and pass for certain of the Queen's current silver coin called a half-crown, he the said A. B. then and there knowing the same to be false and counterfeit; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Uttering, and having other base coin in possession.] "If any person shall tender, utter, or put off any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit, and such person shall, at the time of such tendering, uttering, or putting off, have in his possession, besides the false or counterfeit coin so tendered, uttered, or put off, one or more piece or pieces of false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin:" misdemeanor, imprisonment for not more than two years. *Id. s.* 7. Where two persons were acting in concert in uttering counterfeit coin, and one of them, when in company with the other, uttered a piece of base coin, knowing that his confederate had at the same time other base coin in his posses-

sion: it was holden that both might be convicted under this section. *R.* v. *Gerrish*, 2 *Moody & R.* 219. *R.* v. *Rogers*, 2 *Moody, Cr. Ca.* 85.

Commitment may be the same as the last form, adding, before the words "against the form," &c.—"*and he the said A. B. at the time he so uttered and put off the said false and counterfeit coin, having in his possession, besides the false and counterfeit coin so uttered and put off as aforesaid, five other pieces of the like false and counterfeit coin* [*resembling and*] *intended to resemble and pass for certain of the Queen's current silver money called shillings; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Uttering twice within ten days.] If any person shall, "either on the day of such tendering, uttering, or putting off, or within the space of ten days then next ensuing, tender, utter, or put off any more or other false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit:" misdemeanor, imprisonment with or without hard labour for not more than two years. *Id. s.* 7.

Commitment may be the same as the common form of commitment for uttering, as *ante*, p. 270, adding a statement of the second offence in like manner, thus: *and that the said A. B. afterwards and within the space of ten days thence next ensuing, to wit, on —— at ——, unlawfully did utter and put off a certain other piece of false and counterfeit coin resembling*, &c. as before.

Uttering after a former conviction.] "If any person, who shall have been convicted of any of the misdemeanors hereinbefore mentioned, shall afterwards commit any of the said misdemeanors:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years. *Id. s.* 7.

Commitment may be the same as for a common uttering, as *ante*, p. 270, but stating it to have been done "*feloniously*," adding, "*he the said A. B. having before then, on —— at ——, been duly convicted for having before then on —— at ——*, [stating the offence]; *against the form of the statute in such case made and provided. And you the said keeper*, &c."

Having such coin, with intent to utter it.] "If any person shall have in his custody or possession three or more pieces of false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same:" misdemeanor, imprisonment for not more than three years; and if "any person so

convicted, shall afterwards commit the like misdemeanor," he shall be guilty of felony, and transported for life or for not less than seven years, or imprisoned with or without hard labour for not more than four years. *Id. s.* 8. It is necessary in this case that the party should have three or more pieces of the coin in his possession; but where two persons, acting in concert, have three pieces between them, as, if one have two, and the other one or more, *R.* v. *Williams*, 1 *Car.* & *M.*, 259, both may be convicted.

Commitment:—*On* —— *at* ——, *unlawfully had in his custody and possession ten pieces of false and counterfeit money, [resembling and] apparently intended to resemble and pass for certain of the Queen's current silver coin called shillings, with intent then and there to utter and put off the same, he the said A. B. then and there well knowing the same to be false and counterfeit; against the form of the statute in such case made and provided. And you the said keeper,* &c.

Counterfeiting, &c. copper coin, &c.] "If any person shall falsely make or counterfeit any coin resembling, or apparently intended to resemble or pass for, any of the King's current *copper coin*; or if any person shall knowingly, and without lawful authority (the proof of which authority shall lie on the party accused), make or mend, or begin or proceed to make or mend, or buy or sell, or shall knowingly and without lawful excuse (the proof of which excuse shall lie on the party accused), have in his custody or possession any instrument, *tool*, or engine adapted and intended for the counterfeiting any of the King's current copper coin; or if any person shall *buy, sell*, receive, pay, or put off, or offer to buy, sell, receive, pay or put off any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the King's current copper coin, at or for a lower rate or value than the same by its denomination imports or was coined or counterfeited for:" felony, transportation for not more than seven years, or imprisonment with or without hard labour for not more than two years. *Id. s.* 12.

Uttering base copper coin.] "If any person shall tender, utter, or put off any false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current copper coin, knowing the same to be false or counterfeit; or shall have in his custody or possession three or more pieces of false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the King's current copper coin, knowing the same to be false and counterfeit, and with intent to utter or put off the same:" misdemeanor, imprisonment with or without hard labour for not more than one year. *Id. s.* 12.

Making or having, &c. coining tools, &c.] "If any person shall knowingly, and without lawful authority (the proof of which authority shall lie on the party accused), make or mend or begin or proceed to make or mend, or buy or sell, or shall, knowingly and without lawful excuse (the proof of which excuse shall lie on the party accused), have in his custody or possession, any *puncheon, counter-puncheon, matrix, stamp, die, pattern or mould,* in or upon which there shall be made or impressed, or which will make or impress, or which shall be intended to make or impress, the figure, stamp, or apparent resemblance of both or either of the sides of any of the King's current gold or silver coin, or any part or parts of both or either of such sides;—or if any person shall, without lawful authority (the proof whereof shall lie on the party accused,) make or mend, or begin or proceed to make or mend, or buy or sell, or shall, without lawful excuse (the proof whereof shall lie on the party accused), have in his custody or possession, any *edger, edging tool, collar,* instrument, or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any of the King's current gold or silver coin, such person knowing the same to be so adapted and intended as aforesaid;—or if any person shall, without lawful authority, to be proved as aforesaid, make or mend, or begin or proceed to make or mend, or buy or sell, or shall, without lawful excuse, to be proved as aforesaid, have in his custody or possession, any *press* for coinage, or any *cutting engine* for cutting by force of a screw or of any other contrivance round blanks out of gold, silver, or other metal, such person knowing such press to be a press for coinage, or knowing such engine to have been used or to be intended to be used for or in order to the counterfeiting of any of the King's current gold or silver coin:" felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years. *Id. s.* 10. And if a party procure an innocent agent to make any such tools, such party is guilty as a principal, and may be indicted as such. *R.* v. *Bannen, Car.* & *K.* 295.

Conveying tools, &c. out of the mint.] "If any person shall, without lawful authority (the proof whereof shall lie upon the party accused), knowingly convey out of any of His Majesty's mints any puncheon, counter-puncheon, matrix, stamp, die, pattern, mould, edger, edging tool, collar, instrument, press, or engine, used or employed in or about the coining of coin, or any useful part of any of the several matters aforesaid, or any coin, bullion, metal or mixture of metals:" felony, transportation for life or for not less than seven years, or imprisonment

with or without hard labour for not more than four years. *Id. s.* 11.

Search warrant for such coin, tools, &c.] If any person shall find or discover any false or counterfeit coin, or any instrument, &c. intended for the counterfeiting of such coin, such person shall seize and carry the same forthwith before some justice of the peace; and "where it shall be proved, on the oath of a credible witness before any justice of the peace, that there is a reasonable cause to suspect that any person has been concerned in counterfeiting the King's current gold, silver, or copper coin, or has in his custody or possession any such counterfeit coin, or any instrument, tool, or engine whatsoever, adapted and intended for the counterfeiting of any such coin, it shall be lawful for such justice, by warrant under his hand, to cause any place whatsoever belonging to or in the occupation or under the control of such suspected person to be searched, either in the day or night; and if any such counterfeit coin, or any such instrument, tool, or engine shall be found in any place so searched, to cause the same to be seized and carried forthwith before the said justice, or some other justice of the peace; and wherever any such counterfeit coin, or any such instrument, tool, or engine as aforesaid, shall in any case whatever be seized and carried before a justice of the peace, he shall cause the same to be secured, for the purpose of being produced in evidence against any person who may be prosecuted for any offence against this act." *Id. s.* 14.

No traverse in misdemeanors.] Persons against whom any bill of indictment shall be found for any misdemeanor against this act, shall not be entitled to traverse the same to any subsequent assizes or sessions, unless they show good cause, to be allowed by the court, for the postponement of the trial. *Id. s.* 16.

Evidence of coin being counterfeit.] "Where, upon the trial of any person charged with any offence against this act, it shall be necessary to prove that any coin, produced in evidence against such person, is false or counterfeit, it shall not be necessary to prove the same to be false and counterfeit by the evidence of the moneyer or other officer of His Majesty's mint, but it shall be sufficient to prove the same to be false or counterfeit by the evidence of any other credible witness." *Id. s.* 17.

Accessories, &c.] Principals in the second degree, and accessories before the fact, shall be punishable in the same manner as the principal in the first degree; and accessories after the

fact shall be liable to be imprisoned for not more than two years. *Id. s.* 18.

COLLIERY.

See "Burning," "Larceny," "Malicious Injuries."

COMBINATION.

Forcing a workman to leave work, &c.] "If any person shall, —by violence to the person or property, or by threats or intimidation, or by molesting or in any way obstructing another,— force or endeavour to force any journeyman, manufacturer, workman, or other person, hired or employed in any manufacture, trade, or business, to depart from his hiring, employment, or work, or to return his work before the same shall be finished,—or prevent or endeavour to prevent any journeyman, manufacturer, workman, or other person, not being hired or employed, from hiring himself to, or from accepting work or employment from any person or persons:" imprisonment, with or without hard labour, for not more than three calendar months. 6 *G.* 4, *c.* 129, *s.* 3.

To prove this offence, the prosecutor must prove

1. The violence, threats, intimidation, molesting or obstructing charged.

2. If from this, it do not sufficiently appear that the defendant thereby intended to force the workman to depart from his employment, or to prevent him from hiring himself, &c., as charged, facts must be proved from which it may fairly be implied.

3. That the workman did in consequence depart from his employment, or did not hire himself, if that, and not merely the endeavour, be charged in the information.

Conviction:—*Of having, on* ——, *at* ——, *by threats and intimidations, that is to say, by* [here state the particulars], *endeavoured to force one C. D., a journeyman carpenter, who was then and there hired and employed by one E. F., in the trade of a carpenter as aforesaid, to depart from his said hiring and employment, contrary to the Act*, &c.

Forcing a workman to belong to a club, &c.] "If any person

shall use or employ violence to the person or property of another, or threats or intimidation, or shall molest or in any way obstruct another,—for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty,—or on account of his not belonging to any particular club or association, or not having contributed or having refused to contribute to any common fund, or to pay any fine or penalty,—or on account of his not having complied or of his refusing to comply with any rules, orders, resolutions, or regulations made to obtain an advance, or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade, or business, or the management thereof:" imprisonment, with or without hard labour, for not more than three calendar months. 6 *G.* 4, *c.* 129, *s.* 3.

To prove this offence, the prosecutor may prove

1. The violence, threats, molestation or obstruction charged.

2. The purpose or account for which the violence, threats, &c. were offered; and if this does not appear sufficiently from the preceding evidence of the violence, &c., facts must be proved from which it may fairly be implied.

Conviction:—*Of having, on* ——, *at* ——, *used and employed threats and intimidation to one C. D., a carpenter, by* [here set out the threats], *for the purpose of then and there forcing and inducing the said C. D. to belong to a certain club and association called* ——, *contrary to the Act*, &c.

Forcing a master to alter his mode of trade, &c.] "If any person shall,—by violence to the person or property of another, or by threats or intimidation, or by molesting or in any way obstructing another,—force or endeavour to force any manufacturer or person carrying on any trade or business,—to make any alteration in his mode of regulating, managing, conducting, or carrying on such manufacture, trade, or business,—or to limit the number of his apprentices, or the number or description of his journeymen, workmen, or servants:" imprisonment, with or without hard labour, for not more than three calendar months. 6 *G.* 4, *c.* 129, *s.* 3.

To prove this offence, the prosecutor must prove

1. The violence, threats, intimidation, molestation or obstruction charged.

2. If from this, it do not sufficiently appear that the defendant thereby intended to force the manufacturer to alter his mode of carrying on his business, or to limit the number of his apprentices, &c., as charged, facts must be proved from which this may fairly be implied.

3. That the manufacturer was thereby forced to alter his mode of carrying on his business, or to limit the number of

his apprentices, &c., if that, and not merely the endeavour, be charged in the information.

Conviction:—*Of having, on* ——, *at* ——, *by threats and intimidation, that is to say, by* [here state the particulars], *endeavoured to force one C. D., who then and there carried on the trade and business of* ——, *to* [*limit the number of his apprentices to two*, or as the case may be], *contrary to the Act, &c.*

What the Act permits.] This Act shall not extend to persons who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting, or any of them, shall require or demand for his or their work, or the hours or time for which he or they shall work in any manufacture, trade, or business,—or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which the parties entering into such agreement, or any of them, shall require or demand for his or their work, or the hours or time for which he or they will work, in any manufacture, trade or business. *Id. s.* 4.

Also this Act shall not extend to persons who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting, or any of them, shall pay to his or their journeymen, workmen, or servants for their work, or the hours or time of working in any manufacture, trade, or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices, which the parties entering into such agreement, or any of them, shall pay to his or their journeymen, workmen, or servants for their work, or the hours or time of working in any manufacture, trade, or business. *Id. s.* 5.

Proceedings for offences.] On complaint and information on oath before any one or more justice or justices of the peace, within six calendar months after the offence committed, such justice or justices shall summon the person charged, to appear before any two such justices, at a certain time or place to be specified; and if he shall not appear according to such summons, then such justices (upon proof on oath of the due service thereof, by delivering the same to him personally, or leaving it at his usual place of abode twenty-four hours at least previously), shall issue their warrant for apprehending and bringing him before such justices; or such justices, instead of issuing the summons, may issue their warrant for apprehending and bringing him before them; and upon his appearing upon such summons, or being brought by virtue of such warrant before such justices, or upon proof on oath of such

person absconding, so that such warrant cannot be executed, then such justices shall forthwith hear and determine the matter of complaint; and upon confession by the party, or proof by one or more credible witness or witnesses upon oath, convict or acquit the party. *Id. s.* 7.

"But no justice of the peace, being also a master in the particular trade or manufacture, in or concerning which any offence is charged to have been committed under this Act, shall act as such justice under this Act." *Id. s.* 13.

The conviction shall be in the form or to the effect following: *Id. s.* 9.

Be it remembered, that on the —— day of ——, in the —— year of Her Majesty's reign, and in the year of our Lord ——, A. B. is convicted before us (naming the justices) *two of Her Majesty's justices of the peace for the county* [or *riding, division, city, liberty, town or place*] *of ——, of having* [stating the offence] *contrary to the Act made in the sixth year of the reign of King George the Fourth, intituled An Act* [here set forth the title of this Act*]; *and we the said justices do hereby order and adjudge the said A. B. for the said offence to be committed to and confined in the common gaol for the said county,* [or *riding, division, city, liberty, town, or place*] *for the space of ——, or to be committed to the house of correction, at —— within the said county* [or *riding, division, city, liberty, town, or place*], *there to be kept to hard labour for the space of ——. Given under our hands, the day and year above written.*

This conviction shall be fairly written upon parchment, and transmitted to the next general or quarter sessions. *Id. s.* 10.

Witnesses.] All persons who shall offend against this Act, may, equally with all other persons, be called upon and compelled to give their testimony as witnesses on behalf of the prosecutor, upon any information exhibited under this Act; and in such cases, the witness, having given his testimony, is hereby indemnified against any prosecution against him, for the matter wherein he shall have given testimony. *Id. s.* 6.

The justice of the peace before whom any such complaint shall be made, shall, at the request in writing of any of the parties, issue his summons to any witness to appear and give evidence before such justices; and if any person so summoned shall not appear at the time and place specified in such summons, or offer some reasonable excuse, or shall not submit to be examined as a witness and give his evidence before such justices touching the matter of such complaint, then such justices, (proof on oath, in the case of any person not appearing according to such summons, having been first made of the due

* "An Act to repeal the laws relating to the combination of workmen, and to make provision in lieu thereof."

service of such summons, by delivering the same to him, or by leaving the same for him twenty-four hours before the time appointed, at his usual place of abode), shall, by warrant under their hands, commit him to prison for three calendar months, or until he shall submit to be examined and give evidence. *Id. s.* 8.

The warrant of commitment in this case must be in the form following, or to the like effect. *Id. s.* 9.

Whereas C. D. hath been duly summoned to appear and give evidence before us [naming the justices who issued the summons] *two of Her Majesty's justices of the peace for the county* [or *riding, division, city, liberty, town, or place*] *of* ——, *on this* —— *day of* ——, *at* ——, *being the time and place appointed for hearing and determining the complaint made by* [the informer or prosecutor] *before us, against A. B., of having* [stating the offence as laid in the information], *contrary to the Act made in the sixth year of the reign of King George the Fourth, intituled An Act* [here insert the title of this Act*] : *And whereas the said C. D. hath not appeared before us, at the time and place aforesaid specified for that purpose, or offered any reasonable excuse for his* [or *her*] *default,* [or *And whereas the said C. D. having appeared before us, at the time and place aforesaid specified for that purpose, hath not submitted to be examined as a witness and give his* [or her] *evidence before us touching the matter of the said complaint, but hath refused so to do*] : *therefore we, the said justices, do hereby, in pursuance of the said statute, commit the said C. D. to the* [describing the prison], *there to remain without bail or mainprize for his* [or *her*] *contempt aforesaid, for three calendar months, or until he* [or *she*] *shall submit himself* [or *herself*] *to be examined, and give his* [or *her*] *evidence before us, touching the matter of the said complaint, or shall otherwise be discharged by due course of law: And you the* [constable or other peace officer or officers to whom the warrant is directed] *are hereby authorized and required to take into your custody the body of the said C. D., and him* [or *her*] *safely to convey to the said prison, and him* [or *her*] *there to deliver to the gaoler or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said C. D., and him* [or *her*] *safely to detain and keep, pursuant to this commitment. Given under our hands, this* —— *day of* ——. *in the year of our Lord* ——.

[This commitment to be directed to the proper peace officer, and the gaoler or keeper of the prison.]

Appeal.] If any person convicted of any offence punishable by this Act, shall think himself aggrieved by the judgment of

* See the note, *ante*, p. 278, *n.*

such justices, he may appeal to the next general or general quarter sessions of the peace; and the execution of such judgment shall be suspended, in case the person so convicted shall immediately enter into recognizances before such justices, himself in the penal sum of ten pounds, with two sufficient sureties in ten pounds, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said next general or general quarter sessions, and to pay such costs as the said court shall award; and the justices in the said next court of general or general quarter sessions shall hear and determine the said appeal, and award such costs as to them shall appear just and reasonable, to be paid by either party; and if upon the said appeal, the conviction shall be affirmed, such appellant shall immediately be committed by the said court to the common gaol or house of correction, without bail or mainprize, according to such conviction, and for the space of time therein mentioned. *Id.* *s.* 12.

COMMITMENT.

When a complaint is made before a justice of the peace, of treason or felony, or of a misdemeanor [against the peace, or having a tendency to a breach of the peace, *Per Wightman J.*, *R.* v. *Bartlett*, 1 *D.* & *Lo.* 95, *Sed qu.*] having been committed within the county or other district to which his commission extends, it is his duty to have the offender brought before him; and for this purpose he issues a summons or warrant, as shall be mentioned presently. As soon as the party appears before him, he then examines the witnesses produced, hears whatever the accused party may say in his defence, and then discharges the party, or commits him to prison, according as he judges that a sufficient case has been made out against him or not. Or, instead of committing him, he may take bail for his appearance at the next sessions or assizes, as we have already seen, *ante*, p. 154.

Under this head, therefore, it may be convenient to treat of these various steps, preliminary to the commitment, as well as of the commitment itself, in the following order:—

1. *The complaint or information*, p, 281.
2. *The summons or warrant*, p. 282.
3. *The examination*, p. 286.
4. *The commitment*, p. 298.

1. *The Complaint or Information.*

The complaint or information laid before a justice of the peace, previously to his issuing a summons or warrant against a party accused, is sometimes merely verbal, sometimes taken down in writing, sometimes on oath, sometimes not, according to circumstances. In *R.* v. *Fearshire*, (1 *Leach, C. C.* 202), where upon an indictment for a misdemeanor, parol evidence was tendered of the information on which a warrant to apprehend the defendant had been granted, Lord Mansfield, in rejecting the evidence, is reported to have said that it was the indispensable duty of every justice of the peace to take all charges of whatever nature, kind, or complexion they might be, in writing; that the presumption, therefore, was that the magistrate had done so in that case, and therefore parol evidence of it could not be received. This, however, is not uniformly the case in practice. There must be an information, however, otherwise the magistrate will not be justified in issuing a warrant. *Stephens* v. *Clark*, 1 *Car. & M.* 509. And before a justice of the peace grants a warrant for the apprehension of an offender, it is prudent, in all cases, especially in cases of felony, to examine the person requiring the warrant, or his witness, upon oath; and in a recent case, the court of Queen's Bench seemed to think that there must be an information on oath, in all cases where a warrant is granted. *Caudle* v. *Seymour*, 1 *Q. B.* 889. And the information must be taken by the justice himself or in his presence, so that he may have an opportunity of putting to the complainant such questions as he may think proper; and where it appeared that the justice and his clerk went to the house of the complainant, and the justice remained in a room below, whilst the clerk went up stairs to a room where the complainant was in bed, took her deposition or information in writing, and swore her to it, after which the justice granted a warrant against the party complained of,—the court held that he could not justify, in an action brought for the arrest under the warrant; and Coleridge J. said, that it was by far too common a practice for the clerk to examine the witness apart, take down his evidence, and then read it over to him in the magistrate's presence; whereas the magistrate, who has a discretion to exercise, ought to examine the witness, hear his answers, and judge of the manner in which they are given. *Id.* But in slight cases of misdemeanor, where the justice may deem a summons sufficient to bring the party before him, a written information is seldom taken, but the magistrate merely makes a memorandum of his having granted the summons, against whom, for what offence, and at what times the parties are required to attend before him.

The information, when deemed necessary, may be taken in the following form:—

Berkshire to wit: *The information and complaint of C. D., of ——, yeoman, taken this —— day of ——, in the year of our Lord*, 1846, *before me, E. F., one of Her Majesty's justices of the peace for the said county of ——, who, being sworn, upon his oath, saith that* [&c. stating the deposition, as nearly as possible in the words of the party.]

2. *The Summons or Warrant.*

In what cases.] When a complaint is made to a justice of the peace, that an indictable offence has been committed by any person, within the district to which his commission extends, his duty is to issue a summons or warrant, to bring the party before him, in order that he may examine and inquire into the matter of the charge, and commit, or bail, or discharge the party. In strictness, a justice of the peace may in all cases issue his warrant in the first instance, whether the offence imputed to the party be treason, felony, or misdemeanor, *Butt* v. *Conant*, 1 *Brod. & Bing.* 548, except, it seems, in the case of perjury at common law, *R.* v. *Bartlett*, 12 *Law J.* 127 *m.*, and forgery at common law, over which they have no jurisdiction, judicial, or ministerial. *Id. per Wightman, J.* It is not very usual, however, in cases of misdemeanor, to issue a warrant in the first instance, unless in aggravated cases, or where there is a likelihood of the party's absconding if he be apprized of the complaint being made against him. In ordinary cases, it is usually deemed sufficient to issue a summons in the first instance, and if that be disobeyed, then to issue a warrant.

Summons.] A summons may be in the following form:

Berkshire to wit: To the constable of ——

Whereas A. B., of ——, labourer, hath this day been charged before me, E. F., one of Her Majesty's justices of the peace for the county aforesaid, on the oath of a credible witness, for that he the said A. B., on ——, at ——, did" [&c., here state the offence]; *"these are therefore to require you forthwith to summon the said A. B. to appear before me at ——, on* [*Wednesday next, the tenth day of July instant*], *at the hour of —— in the forenoon of the same day, to answer the said charge, and to be further dealt with according to law; and be you then there, to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal this —— day of ——, in the year of our Lord ——.*

The description of the offence may be in the same form as in a commitment.

The summons should be served upon the party personally,

if possible. But if after due diligence used to effect a personal service, it be found impracticable, from the party's concealing himself or causing himself to be denied, or the like, the summons may in such cases be left for him at his usual place of abode; and if he do not afterwards attend at the time and place specified in the summons, the justice, upon being satisfied of those facts, will grant his warrant.

Warrant.] A warrant is a precept, under the hand and seal of a justice of peace, reciting that a certain criminal charge has been made against a party therein named, and commanding the person, to whom it is directed to apprehend such party, and bring him before the same or some other justice, to answer to the charge.

This warrant may be directed to any person. But it is usually directed to the constable of the district, in which it is to be executed; for he alone can be punished for neglecting or refusing to execute it.

Sometimes it is directed to the constable or constables by name; and if directed to two or more, any one of them may execute it. *Ante*, p. 128. It is usually directed, however, to the constable of the district generally, without naming him, "and all other peace-officers in the said county of ——," &c.; in which case the constable of the district (5 *G.* 4, *c.* 18, *s.* 6, *ante*, p. 128), or any other constable within the extent of the jurisdiction of the justice, may execute it within such jurisdiction. *See also stat.* 5 & 6 *Vict. c.* 109, *s.* 15, *post*, p. 317.

It must state the name of the party to be apprehended, with certainty: a warrant to apprehend "all persons suspected" of an alleged offence, 2 *Hale*, 112, or to apprehend "the authors, printers, and publishers" of a libel, without naming them, *Money* v. *Leach*, 1 *W. Bl.* 555, or the like, would be bad, and might subject the person issuing or executing it to an action for false imprisonment. And it must state it truly; for where the warrant was against the party by a wrong christian name, and an action was brought against the constable for the arrest, the court of Common Pleas held that the defendant could not justify the arrest under the warrant. *Hoyle* v. *Bush*, 10 *Law J.*, 168, *m.*

It must recite the information, or, at all events, must state the offence to have been committed: and therefore where it commanded the constable to apprehend A. B. and bring him before the justice, "to answer to all such matters as on his Majesty's behalf shall be objected against him on oath" by C. D., for an assault committed on her,—it was holden bad, and the justice holden liable to an action by A. B. who had been arrested under it. *Caudle* v. *Seymour*, 1 *Q. B.* 889.

The description of the offence may be in the same form as in a commitment. *See post* p. 299, *and the different forms of*

commitment throughout this work. It should at all events be stated with sufficient certainty, to show that it is a matter within the jurisdiction of the justice.

It may require the person to whom it is directed, to bring the offender before the same justice, or any other justice within the same district or jurisdiction: in the former case, the offender can be brought only before the justice who signed the warrant; in the latter, before any justice of the district, in the officer's discretion. 2 *Hale*, 112.

It is not returnable at any particular time, but remains in force until it is executed. *See Mayhew* v. *Parker*, 8 *T. R.* 110, *and ante*, p. 131. *Dickinson* v. *Brown, Peake*, 234, *per Lord Kenyon, C. J.*

It must be under the hand and seal of the justice granting it. 2 *Hawk. c.* 13, *s.* 31. The following may be the form of it:

Berkshire:—To the constable of ——, *and all other peace-officers in the said county of Berks:*

Forasmuch as A. B. of ——, *labourer, hath this day been charged before me, E. F., one of Her Majesty's justices of the peace for the county aforesaid, on the oath of a credible witness, for that he the said A. B.* [*on* —— *at* ——, *did*, &c. stating the offence as in a commitment]: *These are therefore to command you, in Her Majesty's name, forthwith to apprehend and bring before me, or some other of Her Majesty's justices of the peace in and for the said county, the body of the said A. B., to answer unto the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the* —— *day of* ——, *in the year of our Lord* ——.

As to the manner in which it is to be executed, *see ante, tit.* "*Arrest.*"

Warrants how and in what cases backed.] By stat. 24 Geo. 2, c. 55, s. 1, if any person against whom a warrant shall be issued, shall escape, go into, reside, or be in any place out of the jurisdiction of the justice granting the warrant, either before or after the issuing thereof; any justice for the county or place, where such person shall so escape or be, upon proof on oath of the handwriting of the justice granting such warrant, shall indorse his name thereon; which shall be sufficient authority to the person bringing such warrant, and to all other persons to whom the same was originally directed, to execute the same in such other county or place, and to carry the offender before the justices of that county, if the offence be bailable, and the offender be ready to give bail for his appearance at the next assizes or sessions for the county or place where the offence was committed; and such justice or justices shall take bail accordingly, and shall deliver the recognizance, together with the examination or confession of the offender, and all the proceedings relating thereto, to the constable, or

other person, who shall (on pain of 10*l.* to him who shall sue) deliver over the same to the clerk of assize, or clerk of the peace, where the offender is required to appear. And if the offence be not bailable, or he shall not give bail to the satisfaction of the justice before whom he is brought, the constable or other person shall carry the offender before a justice of the proper county or place where the offence was committed, there to be dealt with according to law.

The magistrate cannot exercise a discretion in this matter; but he must back the warrant, if oath be duly made of the handwriting of the justice who granted it. *R.* v. *Kynaston*, 1 *East*, 117.

The following may be the form of the indorsement:

Northumberland to wit:—Forasmuch as proof upon oath hath been made before me, L. M., one of Her Majesty's justices of the peace for the said county of Northumberland, that the name of E. F., to the within warrant subscribed, is of the handwriting of the justice of the peace within mentioned: I do therefore hereby authorize I. K. who bringeth to me this warrant, and all other persons to whom the said warrant was originally directed, to execute the same within the said county of Northumberland. Given under my hand, this —— day of ——, in the year of our Lord ——.

Backing of Scotch and Irish warrants.] By stat. 13 Geo. 3, c. 31, after making provisions for the backing of English warrants in Scotland, it is enacted (by sect. 2), that if any person against whom a warrant shall be issued by the lord justice-general, lord justice-clerk, or any of the lords commissioners of justiciary, or by any sheriff, or steward-depute or substitute, or justice of the peace, of Scotland, for any offence against the laws of Scotland, shall escape or go into England, any justice of the county or place where such person shall be, may indorse his name on the said warrant, which warrant, so indorsed, shall be a sufficient authority to the person bringing such warrant, and to all persons to whom it was originally directed, and also to all constables, and other peace officers where such warrant shall be so indorsed, to execute the same in the county or place where it is so indorsed, by apprehending the person against whom such warrant is granted, and to convey him into the county or place in Scotland (being adjacent to England) where the offence was committed, before the sheriff or steward-depute, or substitute, or a justice of such county or place, to be there dealt with according to law; or, in case the offence was committed in a county not next adjacent to England, then to convey him to any county of Scotland adjacent to England, before the sheriff or steward-depute or substitute, or a justice there, who shall proceed with regard to such person according to the rules and practice of the law of Scotland,

in like manner as if he had been apprehended in the said county.

And by stat. 44 Geo. 3, c. 92, s. 3, if any person, against whom a warrant shall be issued by any of the judges of the court of King's Bench, or any justice of oyer and terminer or gaol delivery, or any justice of the peace, or other person having authority to issue the same, for any crime or offence against the laws in force in Ireland, shall escape, go into, reside, or be in any place in England or Scotland respectively, any justice of the peace of the county, stewartry, riding, division, city, liberty, town, or place in England or Scotland respectively, whither or where such person shall escape, go into, reside, or be, may indorse his name on such warrant; which warrant, so indorsed, shall be a sufficient authority to the person bringing such warrant, and to all persons to whom it was originally directed, and also to all constables or other peace-officers of the place where such warrant shall be so indorsed, to execute the said warrant in the place where it is so indorsed, by apprehending the person against whom such warrant is granted, and to convey him by the most direct way into Ireland, and before one of the justices of the peace of the county in Ireland living near the place and in the county where he shall arrive; which justice is to proceed with regard to such person, as if he had been legally apprehended in the said county in Ireland.

And lastly, by stat. 54 G. 3, c. 186, s. 2, all warrants issued in England, Scotland, or Ireland respectively, may and shall be indorsed, executed, enforced and acted upon, in any part of the United Kingdom, in like manner as is directed by stat. 13 G. 3, c. 31 (*ante*, p. 285).

In these cases, the justice who indorses the warrant, or some other justice of the same county or place, may admit the party to bail, if the offence be bailable, (and if not bailable, the words "not bailable" shall be written on the face of the warrant, *s.* 2): and he shall take the recognizance in duplicate, one copy of which he shall deliver to the constable or officer, and the other he shall transmit to the court of Exchequer of the part of the United Kingdom in which the bail shall be taken. 45 *G.* 3, *c.* 92, *s.* 1.

As to the apprehension of offenders, who have committed offences in any of the colonies, and have escaped into this country, or who have committed offences in this country, and have escaped into any of the colonies, see *stat.* 6 & 7 *Vict. c.* 34.

3. *The Examination.*

In felony.] Justices of peace, before they shall admit to bail, or commit to prison, any person arrested for felony, or on

suspicion of felony, "shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing." And every such justice shall have authority to bind by recognizance all such persons as know or declare anything material touching any such felony or suspicion of felony, to appear at the next court of oyer and terminer, or gaol delivery or superior criminal court of a county palatine, or sessions of the peace, at which the trial thereof is intended to be, then and there to prosecute or give evidence against the party accused. And such justices and justice respectively shall subscribe all such examinations, informations, bailments, and recognizances, and deliver or cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court. 7 *G.* 4, *c.* 64, *s.* 2, *and see sect.* 5, *infra.*

In misdemeanor.] Also every justice of the peace, before whom any person shall be taken on a charge of misdemeanor, or suspicion thereof, shall take the examination of the person charged and the information upon oath, of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment shall certify the bailment in writing; and shall have authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused, in like manner as in cases of felony; and shall subscribe all examinations, informations, bailments, and recognizances, and deliver or cause the same to be delivered to the proper officer of the court, in which the trial is to be, before or at the opening of the court, in like manner as in cases of felony. *Id. s.* 3.

And if any justice shall offend in anything contrary to the true intent and meaning of these provisions, the court to whose officer any such examination, information, evidence, bailment, or recognizance ought to have been delivered, shall, upon examination and proof of the offences in a summary manner, set such fine upon every such justice as the court shall think meet. *Id. s.* 5.

In offences at sea.] And lastly, justices for any county, riding, division or place in the United Kingdom, may take the information of witnesses upon oath, touching any "treason, piracy, felony, robbery, murder, conspiracy or other offence of what nature or kind soever, committed upon the sea, or in any haven, river, creek or place, where the admiral or admirals hath or have jurisdiction;" and thereupon, if such justice

shall see cause, by warrant under his hand and seal, may cause the person charged in such information to be apprehended and committed to safe custody, there to remain until discharged in due course of law, or until bailed in cases where bail may be taken. 7 *G.* 4, *c.* 38.

How taken, &c.] As soon as the party accused is brought before the justice, the latter, after informing himself of the nature of the charge from the warrant or otherwise, calls upon the witnesses for the prosecution to give their evidence, and administers to each the following oath:—

"*You shall true answer make to all such questions as shall be demanded of you; so help you God.*"

Or if the witness be a Quaker or Moravian, he may affirm thus: "*I, A. B., being* [*one of the people called Quakers,*" or "*one of the persuasion of the people called Quakers,*" or "*one of the united brethren called Moravians,*" as the case may be] *do solemnly, sincerely and truly declare and affirm, that I shall true answer make to all such questions as shall be demanded of me.*"

Or if the witness be a Separatist, he may affirm thus: "*I, A. B., do, in the presence of Almighty God, solemnly, sincerely and truly affirm and declare, that I am a member of the religious sect called Separatists, and that the taking of any oath is contrary to my religious belief, as well as essentially opposed to the tenets of that sect; and I do also in the same solemn manner affirm and declare, that I shall true answer make to all such questions as shall be demanded of me.*"

The justice then proceeds to examine the witnesses, and takes down their depositions in writing. And this should be done by the justice himself or in his presence, in order that he may put such questions to the witness as he may think proper, hear his answers, and judge of the manner in which they are given. *See Caudle* v. *Seymour*, 1 *Q. B.* 889. The following may be the form of the depositions:—

Berkshire:—The examination of C. D., of ——, *farmer, and S. T., of* ——, *labourer, taken on oath this* —— *day of* —— *in the year of our Lord* ——, *before me, E. F., one of Her Majesty's justices of the peace for the county aforesaid, in the presence and hearing of A. B., charged this day before me, the said justice, for that he the said A. B., on* —— *at* ——, [&c. describing the offence as in a warrant of commitment.]

This deponent C. D. upon his oath saith that [&c. stating the deposition of the witness, as nearly as possible in the words he uses. When his deposition is complete, let him sign it.]

And this deponent S. T., upon his oath saith, that, &c.

And the said witnesses C. D. & S. T., against the said A. B., upon the charge aforesaid, having been so examined in his presence and hearing as aforesaid, and the said charge being read

over to him, he the said A. B. is now asked by me, the said justice, if he wish to say anything in his own behalf; whereupon the said A. B. saith [here state whatever the prisoner may say, as nearly as possible in the very words he uses. *See post*, p. 292. He should be asked to sign his examination; but if he refuse to do so, still this will not prevent what he has said upon his examination from being given in evidence against him, if necessary, at the trial. *R.* v. *Lamb*, 2 *Leach*, 625.]

Taken before me the day and year above-mentioned.

These examinations, &c. must be signed by the justice or justices before whom they are taken, who must cause them to be delivered, together with any bailment or recognizances taken in the same matter, to the officer of the court in which the trial is to be had, before or at the opening of the court. 7 *G.* 4, *c.* 64, *ss.* 2, 3, *ante*, p. 287. And he should send the depositions of all the witnesses examined, although he may consider some of them immaterial, *R.* v. *Fuller*, 7 *Car. & P.* 269, and the several examinations of the same witnesses, taken at different times, if such be the case. *R.* v. *Simons*, 6 *Id.* 540. Also each deposition should contain the whole of what the witness stated, which was at all relevant to the charge. *R.* v. *Grady and Curley, per Lord Denman, C. J.* *R.* v. *Coveney*, *Id.* 667. *R.* v. *John Thomas*, *Id.* 817.

The examination of the prisoner may be proved by the magistrate or his clerk, or by any person who was present and attested the prisoner's signature to it; *R.* v. *Hopes*, 7 *Car. & P.* 136. *R.* v. *Hearn*, 1 *Car. & M.* 109; or by proof of the magistrate's handwriting subscribed to it, and that it is the examination of the prisoner; *R.* v. *Mary Foster*, 7 *Car. & P.* 148; but parol evidence of it cannot be received, if it appear that the magistrate took down anything which the prisoner said. *R.* v. *James Walker*, 7 *Car. & P.* 267. *And see Leach* v. *Simpson*, 5 *Mees. & Wels.* 309.

The depositions of the witnesses may also, if necessary, be proved in the like manner. *R.* v. *Wilshaw*, 1 *Car. & M.* 145. And the deposition of a witness, taken by a magistrate, in the presence of the prisoner, in pursuance of stat. 7 G. 4, c. 64, s. 2, 3, 4, mentioned *ante*, p. 287, may, when thus proved, be read at the trial of the prisoner, if the witness in the mean time have died, *R.* v. *Smith*, *R. & Ry.* 339. *R.* v. *Osborne*, 8 *Car. & P.* 113, or be bed-ridden and not likely ever to be able to attend at the assizes, *R.* v. *Wilshaw*, *supra*, or have become insane, *R.* v. *Marshall et al.*, 1 *Car. & M.* 147, or be kept out of the way by or on behalf of the prisoner, *R.* v. *Gutteridges et al.*, 9 *Car. & P.* 471, *per Parke, B.*, or perhaps if at the time of the trial he be unable to travel; 1 *Hale*, 586; but otherwise if it were taken *ex parte*. But even if taken in the prisoner's absence, yet if the witness

be again sworn in his presence, his depositions read over to him slowly in the prisoner's hearing, so that the prisoner might have an opportunity of cross-examining him, if he wished,—if the witness afterwards die, his deposition may be read against the prisoner at his trial. *R.* v. *Smith, supra.*

If a magistrate upon a charge of which he has jurisdiction, commit the accused upon insufficient evidence, he is not liable to any action for doing so; it will be deemed an error in judgment merely, and not the subject of an action. *Cave* v. *Mountain*, 9 *Law J.* 90, *m.* 1 *Man.* & *Gr.* 257.

Prisoner remanded.] If, from the absence of witnesses, or from any other reasonable cause, it become necessary or advisable to defer the examination for any time, the justice may do so. The examinations, as far as they have gone, however, should be signed by the witnesses, and by the magistrate, in the same manner as if the party were actually committed. *Per Ld. Denman, C. J., in R.* v. *Ld. Mayor of London*, 5 *Q. B.* 564, 555. If the accused be in the custody of the constable, under the warrant, and it be intended to resume the examination on the next day, or within some other short period, a mere verbal order to the constable to bring the prisoner before the justice at the time appointed, will be sufficient, and the prisoner remains in custody under the warrant in the mean time. *See* 2 *Hale*, 120. But if it be necessary to remand him for any considerable period, it may be prudent to commit him to prison, in order that he may be brought up again for re-examination, at a certain time. Care must be taken that he be not thus committed for re-examination for an unreasonable time, otherwise the justice so committing him will be liable to an action of trespass for false imprisonment; *Davis* v. *Capper*, 10 *B.* & *C.* 28; the warrant in such a case being deemed wholly void. But whether the time be unreasonable or not, is a question entirely for the jury, in any action against the magistrate as for false imprisonment. *Cave* v. *Mountain*, 9 *Law J.* 90 *m.* 1 *Man.* & *Gr.* 257. Where a magistrate committed a prisoner for re-examination for fourteen days, without a sufficient cause, and in an action by the prisoner for false imprisonment, the jury found the commitment to have been *bonâ fide*, and that it was not from any improper motive, but that it was for an unreasonable time,—the court held the magistrate liable. *Davis* v. *Capper*, 10 *B.* & *C.* 28. *And see S. C.* 4 *Car.* & *P.* 134. So, where a prisoner, apprehended for some disorderly conduct on Sunday evening, was confined in a lock-up that night, and as the constable was taking him the next day to a magistrate, he met the magistrate in the street, told him the matter, and the magistrate ordered him to take the prisoner back, and he would see him on the morrow, which was done accordingly: Patteson, J. held that the magistrate was not warranted in

doing this, and subjected himself to an action for false imprisonment by doing so; he should either have gone into the matter on the Monday, or have desired the prisoner to be taken before some other magistrate. *Edwards* v. *Ferris et al.*, 7 *Car.* & *P.* 542. The following may be the form of the commitment for re-examination:—

Berkshire:—*E. F., esquire, one of Her Majesty's justices of the peace for the said county, to the constable of* ——, *in the said county, and to the keeper of the* [*common gaol*] *at* —— *in the said county*:

"*These are to command you the said constable, in Her said Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol, the body of A. B. charged this day before me, the said justice, on the oath of C. D. on suspicion that he the said A. B.* [*on* ——, *at* ——," &c. describing the offence, as in the warrant for apprehension:] "*But inasmuch as E. F., a material and necessary witness against the said A. B., resides at* ——, *a distance of* —— *miles from the said dwelling-house of the said C. D.,* [or as the case may be,] *and he the said C. D. hath not been able to procure the attendance of the said E. F., but will use his best endeavour to do so on the* —— *day of* —— *instant: You the said keeper are hereby required to receive the said A. B. into your custody in the said common gaol, until* —— *next, the* —— *day of* —— *instant, when you are hereby required to bring the said A. B. before me at* ——, *in the said county, or before such other of Her Majesty's justices of the peace for the said county, as shall be then and there present, to be re-examined and further dealt with according to law. Herein fail you not. Given under my hand and seal, the* —— *day of* ——, *in the year of our Lord* ——."

The party thus committed for re-examination, is not entitled to demand copies of the depositions, as far as they have been taken, under stat. 6 & 7 W. 4, c. 114. *R.* v. *Fletcher*, 13 *Law J.* 67 *m. see post*, p 297.

Upon the day appointed by the commitment, the keeper of the prison will cause the accused to be brought before the committing justice, who will then proceed in the examination of the witnesses, in the manner already mentioned.

Dying declarations.] The dying declarations of a deceased person are evidence against a prisoner, in cases where the cause of the death of the deceased is the subject of inquiry, and the circumstances of the death the subject of the dying declaration. *R.* v. *Mead*, 2 *B.* & *C.* 605. *R.* v. *Lloyd, Williams* & *Roberts*, 4 *Car.* & *P.* 233. And it must appear to have been made at a time, when the deceased was perfectly aware of his danger, and entertained no hope of recovery. *See* 2 *Arch. Pl.'s Acts*, 93, 94. *R.* v. *Crockett*, 4 *Car.* & *P.* 544. *R.* v. *Bonner*, 6 *Car.* & *P.* 386. *R.* v. *Foster*, *Id.* 325. *R.* v. *Spils-*

bury et al., 7 *Car.* & *P.* 187. *R.* v. *Fagent*, *Id.* 238. *R.* v. *Woodcock*, 1 *Leach*, 500. *R.* v. *John*, 1 *East*, *P. C.* 357. *R.* v. *Howell et al.*, *Car.* & *K.* 689. But it is only in cases where the deceased, if he had lived, could be received as a witness, that this evidence is receivable; and therefore the dying declarations of a child of four years old, were holden not to be admissible. *R.* v. *Pike*, 3 *Car.* & *P.* 598. If this declaration be in writing, signed by the deceased, it ought to be produced and proved; the judge at the trial would not receive parol evidence of it. *R.* v. *Gay*, 7 *Car.* & *P.* 230.

Examination of the accused, and his confession.] The manner and form of taking the examination of the accused, we have already treated of, *ante*, p. 288. Care should be had to take it down, as nearly as possible in the words the prisoner uses, whether it amount to a confession or not, and to return it to the assizes or sessions along with the depositions. When the magistrate asks a prisoner whether he has any thing to say in his defence, he should in fairness, at the same time, state to him that he is not to expect any favour from confessing, but that all he says will be taken down, and read in evidence against him at his trial; also, if any threat have previously been holden out to him, the magistrate ought to caution him not to be influenced by it, after which it should be left entirely to the prisoner's own discretion, whether he will make any statement or not; he should not be pressed to do so, nor dissuaded from doing it. *See R.* v. *Green*, 5 *Car.* & *P.* 312. It is true that, in strictness, a confession obtained by means of questions from the magistrate, may be read against a prisoner at his trial; *R.* v. *Ellis, Ry.* & *M., N. P. C.* 432; yet such a mode of obtaining it is not very commendable, and should be avoided. So stating that "the prisoner admits," &c. is an improper way of taking a prisoner's statement, although not of itself an objection to its being received in evidence against him; *R.* v. *Roche et al.*, *Car.* & *M.* 341; the words he used should be stated.

If any inducement, by promise of favour, or by threat, be held out to the prisoner—as by telling him that he had better tell all he knows; *R.* v. *Kingston*, 4 *Car.* & *P.* 387; or that he had better tell where he got the property; *R.* v. *Dunn*, 4 *Car.* & *P.* 543; "You had better split, and not suffer for all of them;" *R.* v. *Thomas* 6 *Car.* & *P.* 353; "it would have been better if you had told at first;" *R.* v. *Walkley* & *Clifford*, 6 *Car.* & *P.* 175; "that unfortunate watch has been found, and if you do not tell me who your partner was, I will commit you to prison as soon as we get to Newcastle;" *R.* v. *Parratt*, 4 *Car.* & *P.* 570; "it is of no use for you to deny it, for there are the man and boy who will swear they saw you do it;" *R.* v. *Mills*, 6 *Car.* & *P.* 146; or the like:—any confession the prisoner

may thereby be induced to make, cannot be given in evidence against him. And where an inducement was thus holden out, to confess a certain offence, and the party in consequence of it not only confessed that offence, but another also which she had committed, and which appeared to be part of the same transaction, it was holden that the confession of the latter offence could not be given in evidence. *R.* v. *Hearn*, 1 *Car.* & *M.* 109. But the threat or promise must be proved to have been holden out, by some person concerned in the apprehending, examining or prosecuting the prisoner, *R.* v. *Row*, *R.* & *Ry.* 153. *R.* v. *Gibbons*, 1 *Car.* & *P.* 97. *R.* v. *Enoch*, 5 *Car.* & *P.* 539. *R.* v. *Cooper*, *Id.* 535, otherwise the confession will be evidence. There seems to have been at one time a difference of opinion among the judges, upon this subject; *R.* v. *Spencer et al.*, 7 *Car.* & *P.* 776; but it appears that they have since considered that the threat or inducement must be holden out by some person in authority, as above-mentioned, otherwise the confession will be receivable in evidence. *R.* v. *Sarah Taylor*, 8 *Car.* & *P.* 733. But where a man was induced to confess that he was present at a murder, in consequence of a hand-bill offering, on the part of government, a reward and a pardon to any accomplice,—Cresswell, J. held that the confession could not be given in evidence. *R.* v. *Boswell et al.*, 1 *Car.* & *M.* 584. However, nothing short of a threat, or a promise of favour with respect to the offence, will have the effect of excluding evidence of a confession. *See R.* v. *Thornton*, *Ry.* & *P.* 77. *R.* v. *Gilham*, *Id.* 186. *R.* v. *Lloyd*, 6 *Car.* & *P.* 393. *R.* v. *Shaw*, *Id.* 372. The fact of the prisoner's being drunk at the time, also, will not exclude his confession. *R.* v. *Spilsbury et al.*, 7 *Car.* & *P.* 187. Also, after an inducement by threat or promise has been holden out to a prisoner, and if before any confession actually made, the prisoner be undeceived as to the promise or threat, and assured that he has nothing to hope from the one or fear from the other, any confession he makes afterwards will be receivable in evidence. *R.* v. *Cleeves*, 4 *Car.* & *P.* 221. *R.* v. *Richards*, 5 *Car.* & *P.* 318. *See R.* v. *Dingley et al.*, *Car.* & *K.* 637. Therefore, where constables had induced a prisoner to confess, by telling him that his companions had "split," and he might as well do the same; but afterwards, upon his appearing before the magistrate who took the examination, he informed the prisoner that his confessing would do him no good, but that he would be committed to prison to take his trial: Lord Denman, C. J., held that a confession by the prisoner to the magistrate, after his caution, was receivable in evidence. *R.* v. *Howes*, 6 *Car.* & *P.* 404. *S. P. R.* v. *Hearn*, 1 *Car.* & *M.* 109. But a person in the presence of the prosecutor, merely saying that the party was not bound to say anything unless she liked, and that if she had

any thing to say the prosecutor would hear her, will not be sufficient for that purpose. *R.* v. *Hewett*, 1 *Car.* & *M.* 534.

But even in cases where the confession of a prisoner is not receivable in evidence, on account of its having been obtained by means of some threat or promise, any discovery made in consequence of it may be proved; *R.* v. *Warwickshall*, 2 *East, P. C.* 658. *R.* v. *Mosey*, 1 *Leach*, 265, *n.*; and in such a case the person who made the discovery, may be asked, whether, in consequence of something he heard from the prisoner, he found any thing, and where, &c., or the like; and the witness in answer can only give evidence of the fact of the discovery. 1 *Arch. Peel's Acts*, 194.

Care must be taken that the prisoner be not examined on oath, otherwise his examination cannot be read. Even where at the conclusion of an examination were the words "taken and *sworn* before me," Park, J. not only refused to receive it in evidence, but refused to receive the evidence of the magistrate's clerk that in fact the prisoner was not sworn. *R.* v. *Rivers*, 7 *Car.* & *P.* 177. *S. P. R.* v. *Pikesley*, 9 *Car.* & *P.* 124. So, where it was headed "the information and complaint" of A. B., Gurney, B. refused to receive it in evidence. *R.* v. *Bentley*, 6 *Car.* & *P.* 148. But what the prisoner may have said on oath upon another occasion, particularly if said voluntarily, and not in pursuance of a summons or other process, will be admissible in evidence against him. *R.* v. *Tubby*, 5 *Car.* & *P.* 530. *See* 1 *Arch. Peel's Acts*, 196, 197.

It may be necessary to mention that the confession of one of two persons charged with a joint offence, cannot be received in evidence against the other, even although the latter were present when the confession was made, and did not deny it. *R.* v. *Appleby*, 3 *Stark*, 33. *R.* v. *Swinnerton et al.*, 1 *Car.* & *M.* 593. *And see R.* v. *Turner*, *Ry.* & *M.* 347. *Palin* v. *Andrews*, *Moody* & *M.* 336.

Summons of a witness.] If, upon the prisoner being remanded, or indeed at any time before the examination is finally closed, the justice be apprised that any person, who can give material evidence in the matter, will not voluntarily attend before him, he may grant the following summons: *see Dalt. c.* 164.

Berkshire:—To the constable of ——:

Whereas information hath been made before me, J. P., esquire, one of Her Majesty's justices of the peace for the said county, that A. D. late of ——, in the county aforesaid, [*on the —— day of ——, in the year of our Lord* 1846, *at ——*," &c. describing the offence as in a warrant of commitment:] "*And that C. D., of ——, in the said county, farmer, is a material and necessary witness to be examined concerning the same:*

These are therefore to require you to summon the said C. D. to appear before me, at ——, in the said county, on the —— day of ——, at the hour of ——, in the —— noon of the same day, to testify his knowledge concerning the premises. Herein fail you not. Given under my hand and seal, the —— day of ——, in the year of our Lord ——. J. P.

A copy of this summons should, in strictness, be served personally on the witness, and the original at the same time shown to him.

Whether a warrant can be issued, in case the witness fails to obey the summons, seems to be doubted. In *Evans* v. *Rees*, (12 *Ad. & El.* 55, 9 *Law J.* 83, *m.*) this was doubted by Littledale, Patteson, and Williams, JJ., but they refrained from giving an opinion upon the subject. Lord Denman, C. J., however, intimated an opinion in favour of the legality of a warrant in such a case; he said that he had no doubt that justices had sufficient power to do what was necessary to compel the attendance of a witness, who appeared to be material, either in a case of misdemeanor or felony; and if the warrant in that particular case had authorized the constable to apprehend the witness, in order to bring him to give his evidence, he thought there was little doubt such a proceeding would be good. *Id.* But as the warrant in that case required the constable to bring the witness before the magistrate, "to find sufficient bail to appear and give his evidence at the next assizes," the whole court held it bad. *Id.*

Binding the parties to prosecute, &c.] If, upon considering the evidence which has been given on the part of the prosecution, together with the examination of the accused, there appear to be no case made out against him, the justice should discharge him. But if the evidence against the accused be such, that the justice thinks it should be submitted to a jury to consider and decide upon it, it will then be his duty to bind the prosecutor or party grieved in a recognizance to prosecute and give evidence, and each of the witnesses in a recognizance to give evidence. *See* 7 *G.* 4, *c.* 64, *ss.* 2, 3, *ante*, p. 287. This is done, by stating to the prosecutor or witness, the substance of the recognizance and condition, stating it however in the second person, "*you acknowledge yourself to owe to our sovereign Lady the Queen*," &c. It is only the recognizance of the prosecutor or witness, merely, that can be required; the magistrate cannot compel him to find sureties for his performance of the condition of the recognizance. The only seeming exception to this is, the case of a married woman; as she cannot enter into a recognizance herself, she must procure her husband or some other person to enter into the recognizance for her. If the prosecutor or witnesses refuse to enter into the recognizance, or in the case of a

married woman, if she do not procure her husband or other person to enter into a recognizance for her, the magistrate may commit them until the sessions, &c., or until such recognizance be given: *see Bennet* v. *Watson*, 3 *M.* & *S.* 1:—a power, however, which should be exercised with great caution. It is for the justice to consider whether the case be a proper one for the sessions or the assizes, and bind the prosecutor and witnesses over accordingly. The following are the forms of the recognizances:

Recognizance to prosecute and give evidence.

Berkshire:—Be it remembered, that on the —— day of ——, in the —— year of the reign of Queen Victoria, C. D. of ——, in the said county, yeoman, personally came before me, J. P. one of Her Majesty's justices of the peace for the said county, and acknowledged himself to owe to our sovereign Lady the Queen the sum of ——, of good and lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if he the said C. D. shall fail in the condition hereon indorsed [or *underwritten*, as the case may be.] *J. P.*

The condition of the within [or *above*] *written recognizance is such, that whereas one A. B. late of ——, was this day brought before the justice within* [or *above*] *mentioned by the within* [or *above*] *bounden C. D., and was by him charged, for that the said A. B.* [*on —— at ——*, &c. describing the offence, as in the warrant:] *if therefore he the said C. D. shall and do at the next general* [*quarter sessions of the peace*, or *gaol delivery*,] *to be holden in and for the said county, prefer, or cause to be preferred, one bill of indictment for the said felony against the said A. B., and shall then also give evidence there concerning the same as well to the jurors that shall then inquire of the said felony, as also to them that shall pass upon the trial of the said A. B., that then the said recognizance to be void, or else to stand in full force and virtue.*

Recognizance to give evidence.

Berkshire:—Be it remembered, that on the —— day of ——, in the —— year of the reign of Queen Victoria, E. F., of ——, in the said county, yeoman, did come before me, J. P., one of Her Majesty's justices of the peace in and for the said county, and did acknowledge himself to owe to our sovereign Lady the Queen the sum of ten pounds of lawful money of Great Britain, to be made and levied of his goods and chattels, lands and tenements, to the use of our said Lady the Queen, her heirs and successors, if he

the said E. F. shall fail in the condition hereon indorsed," [or, *"underwritten,"* as the case may be.] *J. P.*

"The condition of the within [or, *above*] *written recognizance, is such, that if the within* [or, *above*] *bounden E. F. shall personally appear at the next general* [*quarter sessions of the peace,"* or, *"gaol delivery,*] *to be holden at* ——, *in and for the said county, and then and there give such evidence as he knoweth, upon a bill of indictment to be exhibited by C. D. of* ——, *yeoman, to the grand jury, against A. B., late of* ——, *labourer, for* [*feloniously stealing* ——, *the property of the said C. D.*" or stating shortly the offence], *"and in case the said bill be found a true bill, then, if the said E. F. shall then and there give evidence to the jurors that shall pass on the trial of the said A. B., upon the said bill of indictment, and not depart thence without leave of the court; then this recognizance to be void, or else to remain in its full force."*

Care must be taken that these recognizances, together with the depositions of the witnesses, and the examination of the accused, be carefully transmitted to the proper officer of the court in which the trial is to be, so as to be delivered to him before or at the opening of the court on the first day of the assizes or sessions. *See ante*, p. 287.

Right of prisoner to copies of the depositions.] By stat 6 & 7 W. 4, c. 114, s. 3, all persons who shall be holden to bail or committed to prison for any offence against the law, shall be entitled to require and have, on demand, from the person who shall have the lawful custody thereof, (and who is hereby required to deliver the same), copies of the examinations of the witnesses respectively, upon whose depositions they have been so holden to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding three halfpence for each folio of ninety words: Provided that if such demand shall not be made before the day appointed for the commencement of the assize or sessions at which the trial of the person on whose behalf such demand shall be made is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the judge or other person to preside at such trial shall be of opinion that such copy may be made and delivered without delay or inconvenience to such trial; but it shall nevertheless for such judge or other person, so to preside at such trial, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged. This, however, does not extend to the case of a prisoner merely remanded for re-examination; he has no right to copies, until the whole of the examination is completed. *Exp. Fletcher*, 13 *Law J.* 67 *m. S.C. nom. R.* v. *Ld. Mayor of London*, 5 *Q. B.* 555.

And by sect. 4, all persons under trial shall be entitled, at the time of their trial, to inspect, without fee or reward, all depositions (or copies thereof) which have been taken against them, and returned into the court before which such trial shall be had.

4. *The Commitment.*

When, and to what prison.] Every person, charged before a magistrate, with an indictable offence, must, upon such charge being heard and examined into, be either discharged, or bailed, or committed. In what cases he may be discharged, we have already noticed, *ante*, p. 295; in what cases bailed, *ante*, p. 154; and we shall now make some observations on the manner and form of the commitment.

Justices may commit the party charged to the common gaol of the county, &c.; and formerly they could commit to no other place. 5 *H.* 4, *c.* 10. But they have long since been authorized to commit for trifling offences to the house of correction. 6 *G.* 1, *c.* 19, *s.* 2. And now, as to all offences, the committing to the county gaol being often attended with much inconvenience and expense, it is enacted by stat. 5 & 6 W. 4, c. 38, s. 3, that it shall be lawful for any justice of the peace or coroner, acting within their several jurisdictions in England and Wales, to commit for safe custody to any house of correction situate near to the place where the assizes or sessions are to be holden, at which the prisoner is intended to be tried. Justices of a town or place, having exclusive jurisdiction for the trial of felonies and misdemeanors, may nevertheless commit for capital felonies to the gaol of the county in which such town or place is situate, to be tried at the next gaol delivery; 60 *G.* 3 & 1 *G.* 4, *c.* 19, *s.* 1; which was done for the purpose of enabling such justices to commit persons, charged with capital offences, for trial at the assizes. Also, justices of boroughs or franchises, not having power to hear and determine felonies, instead of being obliged, as formerly, to commit all felons for trial at the assizes, may now commit them for trial at the quarter sessions for the county, &c. in which such borough or franchise is situate. 4 & 5 *W.* 4, *c.* 27, *s.* 1. So, justices of boroughs or franchises having power to try felonies, may commit persons, charged with felony, for trial at the quarter sessions of the county, &c., where the offence is within the jurisdiction of the sessions of the county, &c., but not within that of the sessions for the borough or franchise. *Id. s.* 2. But where a felony or misdemeanor is committed within a town or franchise having a recorder, and a prison fit for the confinement of prisoners, the magistrates of such town or franchise shall commit the offender to the prison of such town, in all cases where, if the offence had been committed in the

county, it would be tried at the quarter sessions of the county. *Id. s.* 3.

If the offender be apprehended under a backed warrant, then by stat. 24 G. 2, c. 55, s. 1, if the offence be not bailable, or the offender shall not give bail to the satisfaction of the justice before whom he is brought, the constable or person having him in custody shall carry him before a justice of the proper county or place where the offence was committed, there to be dealt with according to law. *See ante*, p. 284.

Form of the warrant.] The warrant of commitment must be in writing, and under seal. 1 *Hale*, 583. 2 *Hawk. c.* 16, *s.* 13. It must be directed to the gaoler or keeper of the prison to which the offender is committed. *Id.* It should state the name of the party committed, if known. But if that be unknown, and the prisoner refuse to disclose it, it seems that in such a case it will be sufficient to describe the person by his age, stature, complexion, and the like, adding, that he refuses to tell his name. 1 *Hale*, 577.

It must state the offence for which the party is committed, and with sufficient certainty to distinguish it from any other offence. It is not necessary, however, to state the offence with the particularity and certainty required in an indictment; if stated concisely, as for "high treason;" 2 *Hawk. c.* 16, *s.* 16, *and see R.* v. *Despard*, 7 *T. R.* 736; for "burglary in breaking and entering the dwelling-house of J. S.;" 2 *Hale*, 122; or the like, it will be sufficient. If it state any material parts of the offence in the disjunctive, it will be bad. *See R.* v. *Evererd, Cald.* 26. So, a commitment for "wilful and corrupt perjury" was holden bad, because it did not appear upon the face of the warrant to have been committed in the course of a judicial proceeding. *R.* v. *Bartlett*, 1 *D. & Lo.* 95.

It must have an apt conclusion, namely, that the party be detained "until he shall be thence delivered by law," or "by order of law," or "by due course of law;" 2 *Hale*, 123, 2 *Hawk. c.* 16, *s.* 18; or words to that effect. The following is the form of the warrant:

Berkshire:—J. P. esquire, one of Her Majesty's justices of the peace for the said county, to the constable of ——, *in the said county, and to the keeper of the* [*common gaol*] *at* ——, *in the said county.*

These are to command you the said constable, in Her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said [*common gaol*], *the body of A. B., charged this day before me, the said justice, on the oath of C. D. of* ——, *farmer, and others, for that he, the said A. B.* [on the second day of July, in the year of our Lord one thousand eight hundred and forty-six, at ——, in the said county, ten pieces of the current gold coin of the realm called sovereigns,

one woollen cloth coat, and one linen shirt, of the monies, goods, and chattels of the said C. D., feloniously did steal, take, and carry away]. *And you the said keeper are hereby required to receive the said A. B. into your custody in the same* [*common gaol*], *and him there safely to keep, until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal the —— day of ——, in the year of our Lord ——.*

If the warrant be bad, another may afterwards be lodged with the gaoler or keeper of the prison, which will have the effect of detaining the prisoner, should he apply for a habeas corpus to discharge him on account of the defect in the first warrant. *R.* v. *Gordon*, 1 *B.* & *A.* 572.

As to a commitment for re-examination, *see ante*, p. 291.

Charges of conveying the party to prison.] If the offender thus committed be of sufficient ability to pay the expenses of his being conveyed to prison, and the charges of such as may be appointed to guard him thither, he shall do so; or if he refuse, the justice committing him may, by his warrant, command the constable of the hundred or township where the offender dwells, or from whence he shall be committed, or where he shall have goods within the county or liberty, to sell so much of the same as, in the discretion of the said justice, shall be sufficient to pay such charges and expenses, the goods to be appraised by four honest inhabitants of the parish where such goods shall be, and the surplus (if any) delivered to the party. 3 *J.* 1, *c.* 10, *s.* 1.

But if the party have no sufficient goods or money within the county, to pay such charges or expenses, then, upon application to the constable or officer who conveyed the offender to prison, the justice, after examining and ascertaining the reasonable amount to be allowed, shall, by warrant under his hand and seal, order the treasurer of the county or place (or in Middlesex, the overseers of the parish where the offender was apprehended, *s.* 3), to pay the same. 27 *G.* 2, *c.* 2, *s.* 1.

COMMONS, &c.

Scabbed sheep.] "If any person shall turn out, keep, or depasture upon any forests, chase, wood, moor, marsh, heath, common waste land, open field, or other undivided or uninclosed land, any sheep or lambs infected with the disorder called scab or mange; or shall wilfully or knowingly turn out, keep, or depasture upon any such place any sheep or lamb, which at any time within six calendar months immediately previous thereto shall have been infected as aforesaid;" penalty

not more than 10*l.* nor less than 20*s.* for "every such offence, as often as the same are so turned out," together with costs. 38 *G.* 3, *c.* 65, *s.* 1.

Conviction, as *post*, p. 303 :—*For that the said A. B., on ——, at ——, did turn out, keep and depasture divers, to wit, ten sheep and ten lambs, upon a certain common and waste land there called ——, the said several sheep and lambs* [*being then and there,* or *having been within six calendar months previous thereto, to wit, on —— at ——*] *infected with a certain disorder called scab; against the form of the statute in such case made and provided. And I,* &c.

Any persons having sheep or lambs on such place, and having reasonable ground to believe that sheep or lambs are on such place contrary to the provisions of this Act, may apply to a justice, who on complaint on oath may issue his warrant to the keeper of such forest, &c., or his deputy, or to the petty constable, &c., of any parish or place near thereto, or other person, to drive such sheep or lambs to the next pound or other convenient place, there to be examined by the complainant, or his servant, or by the person to whom the warrant is directed, or any of them, six hours' previous notice being given by the complainant to the owner or his servant, or left for him at their last or usual abode (if any or either of them be known, and reside in the parish or place), describing the pound or place to which such sheep or lambs have been taken, in order that they may be present at such examination: and if after such examination it be proved to the satisfaction of such justice that such sheep, &c. were not kept on such lands contrary to the provisions of the Act, they shall be driven back to the place from whence they were taken, and the justice may award reasonable costs and damages to be paid by the complainant to the owner, to be recovered as penalties under this Act. 38 *G.* 3, *c.* 65, *s.* 3. But if it appear that such sheep, when turned out or depastured, or within six months previously, were so infected as aforesaid, then such justice shall direct the same to be impounded and detained, and to be marked on each side with the letter S. (not less than five inches in length) with pitch, tar, or some other adhesive material, such as sheep are usually marked with in the neighbourhood, and shall also cause the left ear to be cut or slit in a horizontal line (not exceeding one inch in length); and the same, when so marked, shall be delivered to the owner; and the expenses of taking, driving, keeping, impounding, and marking of the same, having been ascertained by such justice, shall be paid by such owner, together with the penalties hereby imposed, and recovered in the like manner; and such mark shall be deemed evidence that they have been turned out, kept or depastured contrary to this Act, without any other evidence. *Id. s.* 4. Or if such sheep, &c. shall not be demanded

or taken away by the owner within five days after being marked, a justice by his warrant may order them to be sold, and the money paid to the overseers of the poor of the place where the sheep were detained; and if such money be not claimed by the owner within a year, then it shall be applied in aid of the poor-rate. *Id. s.* 6. The following is the form of the adjudication:—

Berkshire:—Upon the report upon the oath of J. S., this —— day of ——, in the year of our Lord ——, made unto me, J. P., one of Her Majesty's justices of the peace in and for the said county of Berks, respecting certain sheep and lambs [*detained,*" or "*impounded*] *in ——, in the parish of ——, in the said county, by virtue of a warrant under my hand and seal, I do hereby adjudge that the said sheep and lambs,* [*belonging to C. D.,*" or "*the owner or owners thereof, being unknown*], *appearing to me to be infected,* [or, *having, within the space of —— months, immediately previous to the date hereof, been infected*] *with the scab or mange, be marked forthwith, according to the directions of an Act made in the thirty-eighth year of the reign of King George the Third, intituled 'An Act for preventing the depasturing of forests, commons, and open fields, with sheep or lambs infected with the scab or mange, in that part of Great Britain called England.' Given under my hand and seal, the day and year aforesaid.*

If any person within six calendar months shall cut out, alter, or destroy the said mark in the ear; or if the owner shall not immediately renew the mark made on the side, as often as the same shall be defaced, altered, obliterated, or destroyed by any means whatsoever: he shall for every sheep and lamb forfeit on conviction not exceeding 20*s.* nor less than 2*s.*; and such justice shall order such mark to be renewed, and such sheep and lamb to be impounded until such mark is renewed. *Id. s.* 5.

Sheep not marked.] The owner of every sheep and lamb three months old, which shall be turned out upon any such place as aforesaid, shall cause the same to be marked with the initial letters of his christian and surname, or with such marks with which such sheep or lambs have for three preceding years been usually marked, such letters or marks not being less than three inches in length; and on neglect, the owner shall, for every such sheep or lamb not so marked, forfeit not exceeding 2*s.* as often as it shall be turned out as aforesaid. *Id. s.* 2.

Conviction, as *post*, p. 303:—*For that the said A. B. on ——, at ——, being then and there the owner of twenty sheep, which he the said A. B. then turned out upon a certain common and waste land there, called ——, did not cause the said twenty sheep or any of them to be marked with the initial letters of the christian*

and surname of him the said A. B., or with such marks with which the said sheep respectively had, for the three preceding years, been usually marked, but had neglected then and there so to do; against the form of the statute in such case made and provided. And I, &c.

Proceedings for penalties.] The proceedings under this Act, may be before one justice; and the conviction shall be in the words or to the effect following:—

County of } *Be it remembered, that on this —— day of ——, in the —— year of the reign of ——, A. B. is convicted before —— of Her Majesty's justices of the peace for the —— of ——, by virtue of an Act of parliament made in the thirty-eighth year of the reign of King George the Third, intituled "An Act for preventing the depasturing of forests, commons and open fields, with sheep or lambs infected with the scab or mange, in that part of Great Britain called England:" For that* [here specify the offence, with the time and place when and where the same was committed]. *And I* [or *we*] *the said —— do adjudge him* [*her* or *them*] *to forfeit and pay for the same the sum of ——. Given under my hand and seal* [or *our hands and seals*] *the day and year aforesaid.*

The penalty or forfeiture shall be levied by distress and sale of the offender's goods, by warrant of one justice, together with costs; half to go to the informer and half to the overseers of the place where the offence was committed, in aid of the poor-rate. *Id. s.* 7.

Appeal, &c.] Any party aggrieved may appeal to the sessions next after four months from the time the matter of appeal shall have arisen; and the sessions may award costs. *Id. s.* 9.

No proceedings shall be quashed for want of form, or removed by certiorari, &c. *Id. s.* 16.

COMPOUNDING FELONY, &c.

Compounding felony.] This offence, called in our old books theftbote, is where a person, whose goods have been stolen, takes his goods again, or other amends, not to prosecute. 1 *Hawk. c.* 59, *s.* 5. But it is no offence merely to take back one's goods which have been stolen, unless some favour be shown to the thief. *Id. s.* 7.

The offence is punishable with fine, or imprisonment, or both; unless where it is accompanied with that degree of

maintenance of the thief, which may make the party an accessory after the fact to the felony. *Id. s.* 6. *See ante*, p. 6.

Compounding penal actions.] Compounding any penal action at the suit of a common informer, without the order or leave of some of the courts at Westminster, was formerly punishable with the pillory, and a fine of £10; 18 *El. c.* 5, *s.* 4. *And see R.* v. *Crisp et al.* 1 *B. & A.* 282; but now with fine, or imprisonment, or both. 56 *G.* 3, *c.* 138, *s.* 2. And a party may be indicted for taking money for refraining to prefer an information as a common informer, even although the offence, which was to have been the subject of the information, had not in fact been committed; nor is it necessary, to constitute the offence of compounding penal informations, within stat. 18 El. c. 5, that any information should have in fact been laid. *R.* v. *Best*, 9 *Car. & P.* 368.

Rewards for helping to stolen goods.] "Every person who shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, valuable security or other property, which shall, by any felony or misdemeanor, have been stolen, taken, obtained or converted,—shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of felony:" transportation for life or not less than seven years, or imprisonment, with or without hard labour, for not more than four years. 7 & 8 *G.* 4, *c.* 29, *s.* 58.

Commitment:—*On —— at ——, feloniously and corruptly did take and receive from C. D. certain money and reward, to wit, the sum of ten pounds, of the monies of the said C. D., under pretence of helping the said C. D. to certain goods and chattels of him the said C. D., which had before then been feloniously stolen, taken and carried away,* [or *before then been unlawfully obtained from the said C. D. by false pretences,* or as the case may be], *he the said A. B. not having caused the person by whom the said goods were so* [*stolen, taken, and carried away*] *as aforesaid, to be apprehended and brought to trial for the same; against the form of the statute in such case made and provided. And you, the said keeper,* &c.

Advertising a reward for the purpose of getting back stolen property, without prosecuting the offenders, &c., subjects the party to a penalty of 50*l.*, recoverable by action. 7 & 8 *G.* 4, *c.* 29, *s.* 59.

CONCEALING BIRTH.

"If any woman shall be delivered of a child, and shall, by

secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof:" misdemeanor, imprisonment with or without hard labour for not more than two years; and it shall not be necessary to prove whether the child died before or after its birth. 9 *G.* 4, *c.* 31, *s.* 14. Where a woman, delivered of a seven months' child, threw it down a privy, this was holden to be an endeavour to conceal the birth, although the birth appeared to be known to another woman. *R.* v. *Eliz. Cornwall*, *R.* & *Ry.* 336. So if the woman effect the act of secretly burying or otherwise disposing of the dead body, by an agent, she may be guilty of the offence defined by the statute. *R.* v. *Douglas and Hall*, 7 *Car.* & *P.* 644. And where it appeared that such an agent had previously counselled the woman to conceal the birth, it was holden that he might be indicted under the 31st section of the same statute, by which persons counselling a misdemeanor within the Act, are punishable as principals. *Id.* But it must appear that some act of disposal was done by the woman, after the death of the child; *R.* v. *Snell*, 2 *Moody* & *R.* 44; and therefore where a woman having gone to a privy for another purpose, the child slipped from her unawares, fell into the soil, and was suffocated, Patteson, J. held that she could not be convicted under this statute, although it was proved also that she had denied the birth of the child. *R.* v. *Turner*, 8 *Car.* & *P.* 755. *See R.* v. *Coxhead*, *Car.* & *K.* 623. So where the child was found concealed in a bed among the feathers, it not being known who placed it there, and it appearing that the mother had sent for a surgeon to attend her in her lying-in, and had prepared clothes for her baby: Park, J., held that these latter facts negatived concealment, and directed the jury to acquit the prisoner. *R.* v. *Highley*, 4 *Car.* & *P.* 366. And in a recent case, before Rolfe, B., on the northern circuit, where it appeared that the woman put the child into her box in her bedroom, with intent to remove and dispose of it permanently afterwards, for the purpose of concealing its birth; his Lordship held that it was not a case within the statute; the words "otherwise disposing of the dead body," must mean a disposal of the same nature as that preceding it in the same sentence, namely, "secret burying," and must be such as was intended by the woman to be a final disposal of it. *R.* v. *Mary Alton, York Sp. Ass.* 1841, *MS.* But in a still more recent case, where the woman concealed the child between the bed and the mattress, and it appeared that before her delivery she constantly denied her being with child, and after her delivery persisted in saying that she had not been delivered, but at last confessed to the surgeon that she had,—the woman being convicted, and the case reserved for the opinion of the judges, they held that she was properly convicted. *R.* v. *Goldthorpe*, 1 *Car.* & *M.* 335.

It may be necessary to mention, that a woman may be convicted for this offence, either on an indictment for it, or, when indicted for murder of the child, she may be acquitted of the murder and found guilty of the concealment. 9 *G.* 4, *c.* 31, *s.* 14.

Commitment:—*On —— at ——, being then and there delivered of a certain male child, did, by secretly burying the same* [or as the case may be], *unlawfully endeavour to conceal the birth thereof; against the form of the statute in such case made and provided. And you the said keeper,* &c.

The costs of the prosecution are now allowed, in the same manner as in cases of felony. 1 *Vict. c.* 44.

CONFESSION.

See "Commitment."

CONIES.

See "Larceny."

CONSPIRACY.

If two or more persons conspire to do an unlawful act, or to do a lawful act by unlawful means: it is an indictable offence, punishable with fine, or imprisonment, or both,—whether any overt act be done in furtherance of the conspiracy, by any of the parties to it, or not. 1 *Hawk. c.* 72, *s.* 2. *R.* v. *Gill and Henry*, 2 *B.* & *A.* 204. *And see R.* v. *Fowle and Elliott*, 4 *Car.* & *P.* 592. *R.* v. *Biers et al.*, 1 *Ad.* & *El.* 327. A conspiracy, by false reports of the death of Buonaparte, to raise the price of the public funds, was holden an indictable offence, even if it had not been pursued to its consequences, or the parties had not been able to carry it into effect. *R.* v. *De Berenger et al.*, 8 *M.* & *S.* 67. So is a conspiracy to extort money from a man, by charging him falsely with the commission of an act, whether such act be criminal in itself or not. *R.* v. *Ripsal*, 1 *W. Bl.* 368, 3 *Burr.* 1320. *And see R.* v. *Aldridge*, 1 *Nev.* & *M.* 776. So is a conspiracy to obtain money for an appoint-

ment to an office under Government. *R.* v. *Pollman*, 2 *Camp.* 229. So is a conspiracy to obtain from others their goods, under false pretences and by subtle means and devices. *R.* v. *Parker et al.*, 11 *Law J.* 102. *See King et al.* v. *R. in error*, 14 *Law J.* 172, *m.* So, a conspiracy by the master of a female apprentice, an attorney, and a gentleman, to assign the apprentice to the latter, though with her own consent, for the purpose of prostitution, was holden indictable. *R.* v. *Delaval*, 3 *Burr.* 1344; 1 *W. Bl.* 410, 439. But where an indictment charged a conspiracy to cause a female pauper, who was chargeable to a particular parish, to be married to a pauper of another parish, the court held that this of itself was not unlawful; to render the conspiracy indictable, it should show that the marriage was to be effected by fraud or violence, or other unlawful means. *R.* v. *Seward et al.*, 1 *Ad.* & *El.* 706. So, an indictment will not lie for a conspiracy to commit a mere civil trespass. *R.* v. *Turner*, 13 *East*, 228.

A conspiracy is proved, either expressly, or by proof of facts from which it may fairly be implied. It is seldom proved expressly; nor can a case easily be imagined in which that is likely to occur, unless where one of the persons implicated, consents to be examined as a witness for the prosecution. In nearly all cases, therefore, the conspiracy is proved by what is usually termed circumstantial evidence, namely, by the proof of facts from which it may be implied. The acts done by each of the parties, or by some or all of them jointly, in furtherance of their common purpose, are termed overt acts; and when once the concert between the parties is proved, the overt act of each is deemed evidence against all, no matter where committed, whether in the county or elsewhere. And if there be not express proof of the conspiracy itself, such of these overt acts which tend to prove it, should first be selected, and proved; and then the remaining overt acts may be given in evidence. *See R.* v. *Murphy and Douglas*, 8 *Car.* & *P.* 297.

If two be charged with a conspiracy, and there be not sufficient evidence against one, the other must be discharged; for one person alone cannot be guilty of a conspiracy. 1 *Hawk. c.* 72, *s.* 8. And for the same reason, a husband and wife cannot alone be indicted for a conspiracy, for they are but one person in law. *Id.* But if two be indicted for having conspired with others who are not tried, then, if one be acquitted, the other may still be convicted; *Id.*; or, if two be indicted for or charged with a conspiracy, and one die, the survivor may be convicted. *R.* v. *Nichols*, 2 *Str.* 1227.

Commitment:—*On —— at —— did amongst themselves unlawfully conspire, combine, confederate and agree to* [here state the purpose to be effected, specifically.] *And you the said keeper*, &c.

CONSTABLE.

1. *High constables*, p. 308.
2. *Petty constables*, p. 309.
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3. *Constables in boroughs*, p. 320.
4. *County and district constables*, p. 323.
5. *Constables on canals, railroads, &c.*, p. 343.
6. *Special constables*, p. 349.

1. *High constables.*

High or chief constables are appointed for hundreds; petty constables for the parishes, vills, and tithings within the hundred. High constables were formerly chosen by the justices at sessions; and there sworn into office. *Dalt. c.* 28. But now, by stat. 7 & 8 Vict. c. 33, s. 8, "where high constables have heretofore been usually appointed at courts of quarter sessions, the high constables of such places shall hereafter be appointed by such justices as may be present at the special sessions of their division, held for purpose of hearing appeals against the rates of the several parishes in such division, or at any adjournment thereof; but if the hundred or other like division of the county, for which any high constable is to be appointed, be not included within the limits of any one division of the county for which such special sessions are held, then the justices of the peace for the county, assembled at general or quarter sessions, or any adjournment thereof, may from time to time determine the division of the special sessions at which such constable is to be appointed, and shall cause notice of such determination to be sent by post or otherwise to the high constable for the time being of such hundred or other like division; and every high constable, whether appointed at a special sessions or at an adjourment thereof, or at a court leet, or any other special court, shall, if present at the time of his being appointed, then and there take his oath for the due execution of his office, and if otherwise, he shall forthwith, on the receipt of his appointment, go before the next or some other justice of the peace for the county in which he resides, and then and there take his said oath of office, and he shall not, in virtue of his said office of high constable, be required to take any other oath than the said oath for the execution of his office."

Formerly the duties of the high constable were the same, within his hundred, as those of the petty constable within his vill; he had also to superintend the petty constables, and see that they did their duties. Several duties have since been imposed upon high constables by statute, particularly in executing the precepts of justices, &c., which are noticed under their proper heads throughout this work; and these latter have in fact superseded the duty originally assigned to the high constable in common with the petty constables, although he still has the superintendence of the latter, and may present any offence or breach of duty by them to the sessions.

By stat. 7 & 8 Vict. c. 33, s. 7, reciting that it is expedient to relieve high constables from the duty of serving notices of the holding of special sessions on the justices of the peace of the division of special sessions personally,—it is enacted that "in all cases in which special sessions are required to be holden for any division of any county or place, if notice of the intended holding of such special sessions be signed by any one justice of the peace usually acting within such division, and if a copy of such notice be sent by post a reasonable time before the day on which such sessions are to be holden, addressed to each justice of the peace resident and usually acting within such division at his residence in such division, such notice shall be deemed to have been duly given to or served on each such justice of the peace."

High constables, employed in collecting and levying county-rates, must give security, if required to do so by the justices; otherwise the justices may order the overseer of the poor within the hundred to pay their quota of the rate to the treasurer of the county. 55 *G.* 3, *c.* 51, *s.* 19. They shall also account for the monies received by them for county-rates, to the sessions, and their accounts and vouchers, after being examined and passed, shall be deposited with the clerk of the peace. *Id. s.* 12; 12 *G.* 2, *c.* 29, *s.* 8.

For extraordinary expenses incurred by them in the execution of their duty, in cases of tumult, riot, or felony, two justices may order them an allowance; which order shall be submitted to the justices at the next sessions, who may allow or disallow the same. 41 *G.* 3, *c.* 78, *s.* 2.

2. *Petty Constables.*

Who may be.

Who, qualified.] Every able-bodied man resident within a parish, between the ages of twenty-five years and fifty-five years, rated to the relief of the poor, or to the county-rate, on any tenements of the net yearly value of four pounds or

upwards, except such persons as shall be exempt or disqualified as hereinafter mentioned, shall be qualified and liable to serve as constable of that parish. 5 & 6 *Vict. c.* 109, *s.* 5.

Exemptions.] All peers;—all members returned to serve in the Commons House of Parliament;—all judges of Her Majesty's courts of record at Westminster;—all justices of the peace;—all deputy lieutenants;—all clergymen in holy orders;—all priests of the Roman Catholic faith, who shall have duly taken and subscribed the oaths and declarations required by law;—all persons who shall teach or preach in any congregation of Protestant Dissenters, whose place of meeting is duly registered, and who shall follow no secular occupation except that of a schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law;—all schoolmasters;—all serjeants and barristers-at-law actually practising;—all members of the society of doctors of law and advocates of the civil law actually practising;—all attornies, solicitors, and proctors duly admitted in any court of law or equity, or of ecclesiastical or admiralty jurisdiction, in which attornies, solicitors, and proctors have usually been admitted, actually practising, and having duly taken out their annual certificates;—all conveyancers and special pleaders below the bar;—all officers of any such courts, actually exercising the duties of their respective offices;—all coroners, gaolers, and keepers of houses of correction;—all members and licentiates of the Royal College of Physicians in London, actually practising;—all surgeons, being members of one of the Royal Colleges of Surgeons in London, Edinburgh, or Dublin, and actually practising;—all apothecaries, having obtained a certificate to practise as an apothecary from the master, wardens, and society of apothecaries of the city of London, and actually practising;—all officers in Her Majesty's navy or army on full-pay;—all persons enrolled and serving in any corps of yeomanry under officers having commissions from Her Majesty, or lieutenants of counties, or others specially authorized by Her Majesty for that purpose;—all pilots licensed by the Trinity House of Deptford Strond, Kingston-upon Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations;—and all pilots licensed by the lord warden of the Cinque Ports, or under any Act of parliament or charter for the regulation of pilots in any other port;—all the household servants of Her Majesty;—all officers of customs and excise;—all sheriffs and sheriffs' officers;—all high constables;—the clerks of all boards of guardians of the poor, established under the Act for the amendment and better administration of the laws relating to the poor in England and Wales;—the masters of all union

workhouses;—all county or district constables;—all parish clerks;—all registrars and superintendent registrars of births, deaths and marriages;—all churchwardens, overseers, and relieving officers:—shall be freed and exempt from serving the office of constable under this Act. *Id. s.* 6.

Who, disqualified.] All licensed victuallers, and persons licensed to deal in any excisеable liquors or to sell beer by retail, all gamekeepers, and all persons who have been attainted of any treason or felony, or convicted of any infamous crime, shall be disqualified from serving the office of constable under this Act. *Id. s.* 7.

How Chosen and Sworn into Office.

Formerly, constables were usually appointed at the court leet, or in default thereof, by justices of the peace; sometimes otherwise, by statute or custom. But now, it is provided by stat. 5 & 6 Vict. c. 109, s. 21, that after the passing of this Act, no petty constable, headborough, borsholder, tithingman, or peace officer of the like description under any name of office, shall be appointed for any parish, township, or vill within the limits of this Act, except for the performance of duties unconnected with the preservation of the peace or with the execution of this Act, at any court-leet or torn, or otherwise than under the provisions of this Act, or under the provisions of stat. 2 & 3 Vict. c. 93, (*post*, p. 328), or of some Act passed for the amendment thereof. But nothing herein contained shall be taken to prevent the appointment of special constables, or to apply to the city of London or the metropolitan police district, or to any borough which is within the provisions of stat. 5 & 6 W. 4, c. 76, or of any charter granted in pursuance of that Act, or of any Act made for the amendment thereof, or to any parish, town, or place in which rates are or shall be levied for the payment of constables, under the provisions of stat. 3 & 4 W. 4, c. 90, making provision for the lighting and watching of parishes in England and Wales, or of any local Act specially applying to such parish, town, or place; and that nothing herein-before contained shall be taken to apply to the county palatine of Chester. *Id. s.* 21. And where a parish is partly within and partly without such exempted place, only those residing within the exempted part of the parish shall be exempt from serving as constables under the above Act. 7 & 8 *Vict. c.* 52, *s.* 4.

As to the mode of appointing them, under this Act, *see post*, p 314.

Special sessions.] On some day after the twenty-fourth day of March and before the ninth day of April in each year, the justices of the peace of every county in England, [and of every liberty in England having a separate commission of the peace, and not being an incorporated borough, 7 & 8 *Vict. c.* 52, *s.* 1,] shall hold a petty session of the peace in their several divisions, for the appointment of parochial constables, of which session due notice shall be given to every justice usually acting in that division. 5 & 6 *Vict. c.* 109.

Precepts to overseers.] The justices shall, within the first seven days of February in each year, issue a precept, under the hands of any two of them, to the overseers of each parish within the division, requiring them to make out and return, before the twenty-fourth day of March in each year, a list in writing of a competent number of men within their respective parishes, qualified and liable to serve as constables, and also to perform all other requisitions in the said precepts contained; and with the said precept shall be given notice to the said overseers of the time and place where such special session of the peace as aforesaid will be holden. *Id. s.* 2.

Union of parishes for the purpose.] It shall be lawful for the justices at a special petty session of the peace to be holden for that purpose, at any convenient time before the issuing of such precept as aforesaid (of which last-mentioned session due notice shall be given to every justice usually acting within the division), to make an order for uniting any parish or parishes, whenever they shall think it expedient, to any parish adjoining thereto, or for the annexing of any extra-parochial places to any parish adjoining thereto for the purposes of this Act; and a copy of such order shall be served on the overseers of every parish so united, and also on the overseers of such adjoining parish and every such extra-parochial place so annexed, with the precept herein-before mentioned; and every such parish or extra-parochial place so united to any adjoining parish shall thenceforward be deemed, for all the purposes of this Act, to be a part of such adjoining parish: and the inhabitants thereof shall be entitled to attend and vote at any meeting in vestry for the purposes of this Act of the inhabitants of the parish to which such parish is united, as fully as if they were inhabitants of the parish where such meeting is holden. *Id. s.* 4.

Lists and returns.] The overseers of every parish, upon the receipt of such precept, shall summon a meeting of the inhabitants in vestry, to be holden within fourteen days after the receipt of the said precept; and the vestry, at such meeting,

shall make out a list in writing of such number, as shall be named in the precept, of men residing within their parish, who shall be qualified and liable to serve as constables, with the christian name and surname, and with the true place of abode, the title, quality, calling, or business of each, written at full length: provided also, that it shall be lawful for the vestry to annex to the said return the names of any number of men willing to serve the office of constable, and whom the vestry will recommend to be appointed, although not having the qualification hereinafter mentioned. *Id. s.* 3.

And the overseers of each parish shall make out true copies of the list so agreed to in vestry; and where any of the persons named in the said list shall have been chosen to serve, and shall have served, the office of constable in the said parish, in person or by substitute, the overseers shall set against his name in the list the date of the year of such service, and shall, on the first three Sundays in the month of March in each year, fix a true copy of such list upon the principal door of every church, chapel, and other public place of religious worship within their parish, having first subjoined to every such copy a notice, stating that all objections to the list will be heard by the justices of the peace at a time and place to be mentioned in such notice, and having also signed their names at the foot of such copy;—and shall likewise keep the original list, or a true copy thereof, to be perused by any of the inhabitants of their parish at any reasonable time during the first three weeks of the month of March in each year, without any fee or reward;—and, on or before the day limited for making their return, shall sign and return the original list to the justices, as required by the precept. *Id. s.* 8.

And every overseer, who shall neglect or refuse to sign and return such list, or to make out, sign, and publish such true copies as aforesaid; or who shall knowingly leave out the name of any person who ought to be included therein;—or who shall knowingly make a false return of any particular which ought to be comprised therein,—shall upon conviction thereof before two justices of the peace, forfeit and pay for every such offence a sum not more than five pounds. *Id. s.* 9. *The conviction is the same as in ordinary cases; vide post.*

The overseers of each parish shall attend the special session of the peace to be holden for the appointment of constables in their parish, and shall then and there verify the list so returned by them, and shall answer on oath such questions touching the same as shall be put to them, or any of them, by the justices then present: and if any man, not qualified and liable to serve as constable as aforesaid, is inserted in any such list, it shall be lawful for the said justices, upon being satisfied by the oath of the party complaining, or upon other

proof, or upon their own knowledge, that he is not qualified and liable to serve as constable, to strike his name out of such list, and also to strike thereout the names of men disabled by lunacy or imbecility of mind, or by deafness, blindness, or other infirmity of body, from serving as constable; and when every such list shall be duly corrected at such session, or at such adjournment thereof, it shall be allowed by the justices present, or two of them, at such session or such adjournment, who shall sign the same, with their allowance thereof. *Id. s.* 10.

Appointment.] When any list shall have been allowed, the justices shall choose from the allowed list the names of such number of persons as they shall deem necessary (having regard to the extent and population of the parish) to act as constables within the parish, during the year then next following, and until other constables shall be chosen and sworn to act in their stead as constables for such parish: provided always, that where any person shall have been chosen to serve, and shall have served, the office of constable, either in person or by substitute, as herein-after provided, he shall not be liable to be again chosen, until every other person in the parish liable and qualified to serve shall have also served the office of constable, either in person or by substitute. *Id. s.* 11.

Swearing in.] And by sect. 12, the justices shall cause the persons so chosen to be summoned to appear before them on a day to be fixed by such justices, and shall cause to be administered to every such person the following oath; (that is to say,)

'I, *A. B.* of *C.*, do swear, that I will well and truly serve 'our sovereign Lady the Queen in the office of constable, 'for the parish of *D.* [*or* parishes of *D. E., &c.*] for the year 'now next following, or until another constable shall be 'sworn in my stead, according to the best of my skill and 'knowledge. 'So help me GOD.'

Substitutes.] If any qualified person, chosen as aforesaid, shall be unwilling to serve the office of constable in person, and shall find a substitute, to be approved by the justices, and willing to serve for him, the person so chosen and unwilling to serve shall attend with his proposed substitute at the time and place appointed for swearing in constables; and the justices, if they shall approve of such proposed substitute, shall cause the oath to be administered to him, instead of the person so chosen and unwilling to serve; but the service of any person as substitute for another person, shall not be reckoned as his own service, so as to exempt him from being sooner chosen to serve in his own person than otherwise he would have been liable to. *Id. s.* 12.

Lists of those appointed.] And within fourteen days after the appointment and swearing of such constables, the clerk to the justices shall send to every justice usually acting within the division, and also to the clerk of the peace, for the purpose of being laid before the next court of general or quarter sessions, a list containing the names of all constables so appointed in the division, and the parishes for which they have been appointed; and the overseers of the poor shall affix to the door of their respective parish churches a list of the names of the constables appointed in their respective parishes. *Id. s.* 14.

Refusing to serve.] Every person qualified and liable to serve, and who shall be chosen by the justices to serve, the office of constable, and shall be duly summoned to be sworn, and to take upon him the said office, and who shall refuse, or, without reasonable cause to be allowed by the said justices, neglect to attend and to be sworn as constable, or to find a qualified substitute to be sworn in his stead, shall upon conviction thereof before two justices, forfeit and pay any sum not more than ten pounds; and every person who, after being sworn as constable, shall refuse or wilfully neglect to act in the execution of his office, shall, upon conviction thereof before two justices, forfeit and pay for every such offence any sum not more than five pounds. *Id. s.* 13. *The conviction is the same as in ordinary cases; vide post.*

Vacancy, by death, refusal to serve, &c.] In case of the death or disqualification of any constable, during his year of office, of which the overseers shall forthwith give notice to a justice of the peace usually acting for the division,—or in case any person, who shall have been chosen constable, shall refuse or neglect as aforesaid to attend and be sworn, or to find a qualified substitute to be sworn in his stead, and shall have been fined for such refusal or neglect,—the person who has last served, and shall not then be disqualified or exempt, shall be bound to act in his stead, until another constable shall be appointed and sworn to act for the remainder of the year, which shall be done at the next petty session of the peace for the division, of which notice shall be given to all the justices usually acting for the division; and in case the constable making the vacancy was serving as substitute for some other person, the justices shall summon the person originally chosen to attend and be sworn, or to find another substitute, duly qualified, to serve for the remainder of the year; or if the person originally chosen shall be then disqualified, or shall have refused or neglected as aforesaid to attend and be sworn, or to find a substitute,—or if the constable making the vacancy was serving after having been chosen, and not as a substitute,

—the justices at such session shall choose another qualified person out of the allowed list then in force, to serve the office of constable during the remainder of the year, and shall proceed in all respects as in the original appointment of constables for that year; and the person so chosen shall be bound in like manner, and subject to the same penalty, to attend and be sworn, or to find a substitute to be sworn in his stead, to serve for the remainder of the year; and if less than two hundred days shall have elapsed since the first appointment of constables for that year, but not otherwise, the service of the person appointed to act for the remainder of the year, shall be reckoned to him as service for that year. *Id. s.* 16.

Paid Constables.

In what cases.] It shall be lawful for the vestry assembled for the purpose of making such return as aforesaid, [*see sect.* 3, *ante*, p. 312,] to resolve that one or more paid constables shall be appointed for their parish; and if the vestry shall so resolve, a copy of the resolution, and of the amount of salary which the vestry shall resolve on paying to such constable or constables, shall be sent by the overseers to the justices, with the return hereinbefore mentioned. *Id. s.* 18.

How appointed.] The justices, at the session of the peace holden for the appointment of constables, upon receiving from any parish a copy of any such resolution as aforesaid, if they shall be satisfied with the amount of salary agreed to be paid, shall appoint so many paid constables to act for that parish as shall be agreed to by the resolution, or if the same resolution shall have been agreed to by more parishes than one adjoining each other, may, if they shall think fit, appoint the same paid constables to act conjointly for all such last-mentioned parishes; and in every parish in which a paid constable shall be appointed under this Act, the justices, if they shall think fit, need not appoint any unpaid constable, or may appoint a smaller number of unpaid constables than they had otherwise resolved on appointing for that parish; and every paid constable shall hold his appointment, until he shall resign or be dismissed for misconduct by the justices of the division in petty session assembled, or until the vestry shall rescind the resolution for his appointment at any meeting of vestry holden for making such return as aforesaid. *Id. s.* 19.

Salary.] The amount of the salary to every such paid constable, shall be paid by the overseers, out of any monies in their hands collected for the relief of the poor. *Id. s.* 20.

Power, &c. of Constables.

Their duties.] As to the duties of a constable in arresting for crime, with or without warrant, and also in the prevention of crime, and in keeping the peace, *see ante*, pp. 127, 128. *Cook* v. *Nethercote*, 6 *Car.* & *P.* 741. *Howell* v. *Jackson*, *Id.* 723. *R.* v. *Smith et al.*, *Id.* 136. *R.* v. *Hems*, 7 *Car.* & *P.* 312. *Timothy* v. *Simpson*, 1 *Cr. M.* & *R.* 760.

Within what district.] The said constables shall have, within the whole county, and also within all liberties and franchises, and detached parts of other counties situated therein, and also in every county adjoining to the county in which they are appointed, all the powers, privileges, and immunities, and shall be liable to all the duties and responsibilities, of a constable within his constablewick, but shall not be bound to act as a constable beyond the parish for which they are severally appointed and sworn, without the special warrant of a justice of the peace: provided always, that in those counties in which any chief constable or superintendent shall have been appointed under the authority of stat. 2 & 3 Vict. c. 93, [*post*, p. 326,] or of any Act passed for the amendment thereof, the constables appointed under this Act for any parish within the district for which such chief constable or superintendent shall have been appointed, shall be subject to the authority of such chief constable or superintendent. 5 & 6 *Vict. c.* 109, *s.* 15.

Lock-up houses.] It shall be lawful for the justices of the peace of any county in general or quarter sessions assembled, if they shall think fit, to order that lock-up houses for the temporary confinement of persons taken into custody by any constable, and not yet committed for trial, or in execution of any sentence, shall be provided in such places within their county as the said justices shall think fit; and for that purpose, to purchase and hold lands and tenements, or to appropriate to that purpose any lands and tenements belonging to the county which are not needed for the purpose to which they were applied or intended to be applied before such appropriation; or, instead of providing new lock-up houses, to order that the lock-up houses, strong rooms, or cages belonging to any parish, be appropriated for the purpose of this Act, and if necessary be enlarged or improved; and the expense of building, hiring, or otherwise providing, repairing, and furnishing such lock-up houses shall be defrayed out of the county-rates: provided always, that notice of the day and hour at which any business relating to providing, enlarging, or improving any such lock-up house will begin at such session, shall be given

by the clerk of the peace, with the notice of holding the session, on the requisition of any five justices acting for such county; and that no such lock-up house shall be built or otherwise provided, enlarged, or improved, except upon such plan as shall be approved by one of Her Majesty's principal secretaries of state: provided also, that every such lock-up house shall be within the inspection of the inspectors of prisons. *Id. s.* 22.

And whenever the justices shall have provided a lock-up house under this Act, they shall also appoint a superintending constable to have the charge thereof, who shall have all the powers and immunities of a parish constable under this Act, and shall have the superintendence of all the parish constables appointed in such parishes as shall be ordered by the said justices, and under such regulations as they shall make; and every such superintending constable shall be entitled to hold his office until dismissed by the justices in general or quarter session assembled, and shall receive such salary out of the county rates as the justices assembled as aforesaid shall order. *Id. s.* 23.

Their fees, allowances, &c.] The justices of the county, in general or quarter session assembled, shall from time to time, (subject to the approval of one of Her Majesty's principal secretaries of state,) settle tables of fees and allowances to the clerks to the justices for the performance of their duties under this Act, and to the constables for the service of summons and execution of warrants, and for the performance of such other occasional duties which may be required of the said constables, for which the said justices shall think that fees ought to be allowed; and whenever any duty, for which any such fee or allowance shall have been settled, and for which the payment is not by law charged upon the county rates, shall have been performed by any clerk, or by any constable appointed under this Act, the amount of the fee or allowance shall be paid by the overseers of the parish, in respect of which such fee has become payable, out of any monies in their hands collected for the relief of the poor, upon the order of the justices in petty session assembled for the division, and under such regulations as shall be made from time to time by the justices in general or quarter session assembled, subject to the approval of the secretary of state. *Id. s.* 17.

And as to expenses incurred by him on account of his parish or township, it is enacted by stat. 18 *G.* 3, *c.* 19, *s.* 4, that every constable, headborough, or tithingman shall "every three months, and within fourteen days after he shall go out of such office," deliver to the overseers of the poor of his

parish, township, or place, an account, fairly entered in a book to be kept for the purpose, and signed by him, of all sums expended by him or received by him on account of such parish; the overseers shall then lay such account before the inhabitants, and if the majority approve of it, the overseers shall pay the amount out of the poor-rates; but if the amount be not approved of, it shall be given back to the constable, who may then produce the same before any justice of the peace of the county, &c. in which such parish is situate, giving reasonable notice thereof to the overseers, which said justice is hereby authorized to examine the same, and to hear and determine any objections that shall be made to the said accounts, and to settle the sum which to him shall appear due, and to enter the same in the said account, and to sign his name thereto; and the overseers shall then pay such sum out of the poor's rate. Expenses incurred by a constable, in prosecuting for an assault upon himself in the execution of his duty relative to parish business, *R.* v. *Bird et al.*, 2 *B.* & *A.* 522, or in prosecuting a person taken by him in the act of committing an offence in a place of religious worship, having been bound over to prosecute, *R.* v. *Seville et al.*, 5 *B.* & *A.* 180, are not within the meaning of this statute.

This statute gives the overseers (if a majority of them concur in it, *R.* v. *JJ. of Lancashire*, 5 *B.* & *A.* 755,) an appeal to the next sessions, they giving reasonable notice thereof to the justice, constable, or headborough, or tithingman; and the justices at sessions shall receive such appeal, or (if sufficient notice have not been given) shall adjourn it to the next sessions, and finally hear and determine it, and may give costs to the party for whom it shall be determined. *Id. s.* 5.

The justices at sessions may lay down or alter certain rules and regulations as to the costs or charges to be allowed to any person by virtue of this Act, which rules and regulations, being approved and signed by one or more judges of assize, shall be binding on all persons. *Id. s.* 9.

Actions against them.] If an action be brought against a constable for any thing done by him in the execution of his office, the action must be commenced within six calendar months; 24 *G.* 2, *c.* 44, *s.* 8. *Parton* v. *Williams*, 3 *B.* & *A.* 330; the venue must be laid in the proper county; the defendant may plead the general issue, and give the special matter in evidence; and if he recover, he shall have double costs. 7 *Jac.* 1, *c.* 5. 21 *Jac.* 1, *c.* 12. Other regulations, in particular cases, are made by particular statutes. If a constable have acted under a justice's warrant, we have seen (*ante*, p. 128,) that a demand of a perusal and copy of such warrant must also be made, before the action is commenced. 24 *G.* 2, *c.* 44, *s.* 6.

Recovery of Penalties.

Penalties, how levied.] All penalties herein made payable on conviction of any offender before two justices of the peace, may be levied, in case of non-payment thereof, with the costs and charges attending such conviction, by distress and sale of the goods and chattels of the offender, by warrant under the hands and seals of any justice of the peace of the county, riding, or place wherein such conviction shall have taken place, with the reasonable costs of such distress and sale; and the overplus, if any, shall be returned to the party whose goods and chattels shall have been distrained. 5 & 6 *Vict. c.* 109, *s.* 24.

Application of penalties.] And all penalties levied under this Act shall be applied in aid of the poor-rates of the parish, in which the offence shall have been committed for which such penalties shall be levied. *Id. s.* 25.

Interpretation Clause.

And by sect. 26, it is enacted, that in this Act the word "*County*" shall be taken to extend to every riding or division of a county for which there is a separate court of general or quarter sessions of peace; and the word "*parish*" shall be taken to extend to every township or other district maintaining its own poor, and also to every extra-parochial place which shall not be annexed to an adjoining parish, for which places the justices in petty sessions assembled shall be empowered to appoint persons to act as overseers; and the word "*overseers*" shall be taken to extend to all persons charged with collecting rates for the relief of the poor in any parish, and, in extra-parochial places not added to any adjoining parish, to the persons appointed by the justices as aforesaid.

3. *Constables in Boroughs.*

How appointed and sworn.] In all boroughs within the late Municipal Corporation Act, the constables are appointed by the watch-committee, and sworn in before some justice of the peace having jurisdiction within the borough; 5 & 6 *W.* 4, *c.* 76, *s.* 76, *and see s.* 86; and such committee, or any two justices having jurisdiction within the borough, may suspend or dismiss any of them they may think negligent in the discharge of his duty, or otherwise unfit for the same, after which he shall not be reappointed without the consent of two justices. *Id.*

s. 77. The watch-committee shall make regulations for preventing neglect or abuse, and for rendering such constables efficient in the discharge of their duties. *Id.*

Where and how they shall act.] The constables so appointed and sworn shall, "not only within such borough, but also within the county in which such borough or part thereof shall be situated, and also within every county being within seven miles of any part of such borough, and also within all liberties in any such county, have all such powers and privileges, and be liable to all such duties and responsibilities as any constable duly appointed now has or hereafter may have within his constablewick, by virtue of the common law of this realm or of any statute made or to be made, and shall obey all such lawful commands as they may from time to time receive from any of the justices of the peace having jurisdiction within such borough, or within any county in which they shall be called on to act as constables, for the conducting themselves in the execution of their office. *Id. s.* 76.

Such constable, during the time of his being on duty, may "apprehend all idle and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of intention to commit a felony," and deliver them into the custody of the constable in attendance at the nearest watch-house, in order that they may be secured until they can be brought before a justice of the peace, or give bail conditioned for their appearance before a justice, if the constable think fit to take it. *Id. s.* 78.

In what cases may take bail.] And where any person is thus brought in custody to the watch-house, "charged with any petty misdemeanor," the constable in attendance may, if he think fit, take bail in recognizance for his appearance within two days before a justice of the peace, at a time and place to be specified, and shall enter in a book, to be kept for that purpose in every watch-house, the names, residence, and occupation of the party, and his surety or sureties (if any) entering into such recognizance, together with the condition thereof, and the sums respectively acknowledged, and shall lay the same before such justice as shall be present at the time and place when and where the party is required to appear; "and if the party does not appear at the time and place required, or within one hour after, the justice shall cause a record of the recognizance to be drawn up, to be signed by the constable, and shall return the same to the next general or quarter sessions of the peace for the borough, or for the county in which such borough is situate in those boroughs for which there shall be no separate general or quarter sessions of the peace, with a certificate at the back thereof, signed by such justice,

that the party has not complied with the obligation therein contained; and the clerk of the peace shall make the like estreats and schedules of every such recognizance, as of recognizances forfeited in the sessions of the peace; and if the party not appearing shall apply by any person on his behalf to postpone the hearing of the charge against him, and the justice shall think fit to consent thereto, the justice shall be at liberty to enlarge the recognizance to such further time as he shall appoint; and when the matter shall be heard and determined, either by the dismissal of the complaint, or by binding the party over to answer the matter thereof at the sessions, or otherwise, the recognizance for the appearance of the party before a justice shall be discharged without fee or reward." *Id. s.* 79.

Penalty for neglect of duty.] If any constable of a borough "shall be guilty of any neglect of duty, or of any disobedience of any lawful order:" upon conviction before two justices, imprisonment for not more than ten days, or fine not exceeding 40*s.*, or to be dismissed from his office, as such justices shall think meet. *Id. s.* 80. The conviction must be in this form or to the like effect. *Id. s.* 130.

} *Be it remembered, that on the —— day of ——, in* to wit. *} the year of our Lord ——, in the borough of ——, in the county of ——, A. B. is convicted before us, E. F., and G. H., two of Her Majesty's justices of the peace for the said county* [or *borough*, or otherwise, as the case may be, *vide supra*,]* *for that the said A. B., on ——, at ——, being then and there a constable of the* [*said*] *borough of ——, was then and there guilty of a neglect of his duty as such constable, by* ——[here set out the neglect of duty charged; or if the conviction be for disobedience of an order, set out the order, and then the disobedience, with time and place, &c. with sufficient certainty: *against the form of the statute in such case made and provided; and we do adjudge that the said A. B. shall for the said offence* [*be imprisoned in the ——, at ——, for the space of —— days*, or *forfeit the sum of —— shillings, and shall pay the same, on or before ——, to the treasurer of the said borough, to be by him applied according to the directions of the statute in that case made and provided*; or *forthwith be dismissed from his said office*:] *Given under our hands the day and year first above mentioned.*

Assaulting them in the execution of their duty.] "If any person shall assault or resist any constable of any borough, appointed under this act, in the execution of his duty, or shall aid or incite any person so to assault or resist:" upon conviction before two justices, penalty not exceeding 5*l.* *Id. s.* 81. Or the prosecutor may proceed by indictment. *Id.*

Conviction, same as the last form to the asterisk,* *For that he the said A. B., on ——, at ——, unlawfully did assault and beat one C. D., he the said C. D. being then and there a constable of the borough of ——, duly appointed in that behalf, and in the due execution of his duty as such constable then and there being; against the form of the statute in such case made and provided; and we do adjudge*, &c. as in the last form.

Their wages, expenses, &c.] The treasurer of the borough shall pay the constables such salaries, wages and allowances, and at such times, as the watch-committee shall (subject to the approbation of the council) direct; and the council shall order to be paid any extraordinary expenses which such persons shall appear to have necessarily incurred in apprehending offenders, and executing the orders of any justice of the peace having jurisdiction within such borough, such expenses having been first examined and approved by such justice; and the said treasurer shall also pay such further sums as the watch-committee shall (subject to the approbation of the council) award to any of the constabulary force, as a reward for extraordinary diligence or exertion, or as a compensation for wounds or severe injuries received in the performance of their duty, or as an allowance to such of them as shall be disabled by bodily injury received, or shall be worn out by length of service, and all other charges and expenses which the watch-committee shall (subject to the approbation of the council) direct to be paid, for the purposes of the constabulary force under this act. *Id. s.* 82.

4. *County and District Constables.*

In what cases appointed.] In all cases where it shall be made to appear to the justices of the peace of any county in England or Wales, in general or quarter sessions assembled, or at any adjournment thereof, that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants, and for the security of property, within the county, [or within any division of the county for which special or petty sessions of the peace are holden, or for any number of such divisions, *sect.* 19,] it shall be lawful for them to set forth the same, by a report in writing under the hands of the majority of the justices there present, and to declare how many constables are needed in their opinion to be appointed for the purposes aforesaid, and the rates of payment which it would be expedient to pay to the chief and other constables; and every such report shall be sent to one of Her Majesty's principal secretaries of state: Provided always, that the number

of constables shall not be more than one man for every thousand of the inhabitants according to the last parliamentary enumeration of the population for the time being, the population of the boroughs and towns, hereinafter excepted from the operation of this Act, being deducted therefrom. 2 & 3 *Vict. c.* 93, *s.* 1.

And for the purposes of this Act, all detached parts of counties, and also all liberties and franchises, (other than boroughs within stat. 5 & 6 W. 4, c. 76,) shall be considered as forming part of that county by which they are surrounded, or if partly surrounded by two or more counties, then as forming part of that county with which they have the longest common boundary; and so much of every such detached part of any county, or of any liberty and franchise, which is not of itself an entire hundred, wapentake, ward, rape, lathe, or such other division of a county, shall be considered as forming part of that hundred, ward, wapentake, rape, lathe, or such other division, whereby it shall be surrounded, in the county of which it shall be considered a part for the purposes of this act, or if partly surrounded by two or more hundreds, wapentakes, wards, rapes, lathes, or such other divisions, then as forming part of that one with which it shall have the largest common boundary. *Id. s.* 27.

And by stat. 3 & 4 Vict. c. 88, s. 2, reciting that section, and reciting that many populous towns are situated in more than one county, and also that the boundaries of many counties are so irregular that parts thereof, although not wholly separated from the main body of the county, may yet be more conveniently united, for the purposes of the said Act, with some neighbouring county: it is enacted, "That it shall be lawful for the justices of any two or more neighbouring counties, in their several general or quarter sessions assembled, from time to time, to agree that such parts of their several counties as to them shall seem fit, shall, for the purposes of the said Act, be considered as forming part of any other of the said counties; and whenever any such district shall be so transferred, for the purposes of the said act, from one county to another, with the consent of the justices of both the last-mentioned counties, such district shall be considered, for the purposes of the said Act, as if it were detached from the county to which it belongs, and wholly surrounded by the county to which it is so transferred; and all the provisions contained herein or in the said Act, or in an Act passed in the last session of parliament, intituled *An Act for the better Administration of Justice in detached parts of Counties*, [2 & 3 Vict. c. 82,] respecting detached parts of counties, shall be taken to apply to such transferred districts."

But the above Act (2 & 3 Vict. c. 93) shall not extend to any borough incorporated under stat. 5 & 6 W. 4, c. 76, or under any charter granted in pursuance of the said Act; nor shall any

such borough for which a separate court of quarter sessions of the peace shall be holden, be liable to contribute to the expenses of this Act, or to be charged with any part thereof in their account with the treasurer of such county. 2 & 3 *Vict. c.* 93, *s.* 24.

Also, notwithstanding any thing herein contained, the power to appoint and pay, and to make and levy rates for paying constables, under any Act of parliament made for watching any town, parish, or place, which by the last parliamentary enumeration of the population contained more than ten thousand inhabitants, shall continue, as if this Act had not been made, for two years after the passing of this Act, and thence until the end of the then next session of parliament. *Id. s.* 26. But in all other places, upon the appointment of constables under this act in any county, or in any division or divisions of a county, the power to appoint and pay, and to make rates for paying, any constables, in any hundred, parish, township, or place within such county, division or divisions, (other than high constables or special constables,) and all the powers and duties of such constables, shall cease and determine. But nothing herein contained shall prevent or invalidate the appointment of parochial constables; also nothing herein contained shall prevent the appointment of any constable to act as returning officer in any election, whenever such appointment may be necessary. *Id. s.* 25.

Police districts.] By stat. 3 & 4 Vict. c. 88, *s.* 27, reciting that the number of constables needed may be different in different parts of the same county: it is enacted, That "the justices of the peace for any county, in general or quarter sessions assembled, if they shall be of opinion that a distinction ought to be made in the number of constables appointed to keep the peace in different parts of the county, may divide the county or any part thereof into police districts, consisting of such parishes and places, or parts of parishes and places as shall appear to them most convenient, and to declare the number of constables which ought to be appointed for each police district, and from time to time to alter the extent of such police districts, and the number of constables to be appointed for each; and a report of every such proposed division or alteration, and of the number of constables proposed for each police district, with an estimate of its extent and population, and of any other circumstances upon which the determination of the justices shall have been grounded, shall be sent to one of Her Majesty's principal secretaries of state, and, if approved by the secretary of state, such division or alteration shall be deemed to be completed."

And "if the secretary of state shall approve of such division of the county or of any part thereof into police districts for the

purpose aforesaid, the expense of putting the said Act into execution in such county or part of such county shall be classed under two heads, of general expenditure and local expenditure, and the general expenditure shall be defrayed in common by all the districts, and the local expenditure, consisting of the expense of the salaries and clothing of the constables appointed for each district, and such other expenses as the justices, subject to the approval of the secretary of state, shall direct to be included under this head, shall be defrayed by each police district separately; and the police-rates shall be assessed and levied in each police district accordingly: provided always, that, notwithstanding the division of any county or part of any county into police districts, the constables of all such districts shall continue as part of the same force, and be subject to the same authority, and be liable, if required, to perform the same duty, in any part of the county or elsewhere, as if no such division into police districts had been made." *Id. s.* 28.

And "in case the justices of any county shall not resolve on appointing constables, under the said Act of the last session, for the whole of their county, it shall be lawful for them, if they shall think fit, in general or quarter sessions assembled, to form any number of contiguous parishes, townships, or places into a division, so that such division contain not less than twenty-five thousand persons, according to the last census for the time being, and to appoint constables under the said Act for every such division; and all provisions of the said Act as amended by this Act, and of this Act, relating to the appointment of constables for any division or divisions for which special or petty sessions of the peace are holden, or relating to police districts, shall be deemed to apply to the police divisions so formed." *Id. s.* 29.

Appointment of the chief constable.] As soon as any rules shall have been received from the secretary of state (as mentioned in sect. 3, *post*, p. 329,) the justices of the county in general or quarter session assembled, or at any adjournment thereof, shall, subject to the approval of the secretary of state, appoint a person, duly qualified according to the rules, to be chief constable of the county, and, in every case of vacancy of the office, shall, subject to the like approval, appoint another fit person in his room; and every chief constable so to be appointed may hold his office until dismissed by the justices in general or quarter session assembled, or at any adjournment thereof; but when any county shall have been divided for the purpose of returning members to serve in parliament for each division, it shall be lawful to appoint two chief constables for such county, if the justices of such county shall think fit; also, it shall be lawful to appoint the same chief constable for

two or more adjoining counties or parts of counties, if the justices of such counties in general or quarter session assembled shall mutually agree to join in such appointment. 2 & 3 *Vict. c.* 93, *s.* 4.

And by stat. 3 & 4 Vict. c. 88, s. 25, in any county in which two chief constables shall have been appointed under the authority of the above Act, the justices of the said county, if they shall think fit, in general or quarter session assembled, may order that separate accounts shall be kept of the expenses of the force placed under the authority of each chief constable, and that the police-rates shall be assessed and levied separately, upon the districts of each chief constable, and applied separately to the expenses of the police force maintained therein.

And every chief constable shall, on the first day of every month, transmit to the clerk of the peace for the county for which or for some district whereof, such constable shall act, a return showing the actual disposition and number of the constabulary force of the county or district for which such constable shall act, during the preceding month, which return shall specify the changes made from time to time in such force as well in number as by name, and shall distinguish by number and name the members of the police force of any other district serving within his district; and the clerk of the peace shall cause the said return to be laid before the justices at the next ensuing quarter sessions for examination. 3 & 4 *Vict. c.* 88, *s.* 31.

Deputy chief constable.] And the chief constable shall, subject to the approval of the justices in general or quarter sessions assembled, or at any adjournment thereof, appoint one of the superintendents to act as his deputy, in case of his being incapable, from illness or necessary absence from the county, to perform the duties of chief constable; and the deputy so appointed shall, in such case as aforesaid, and also in case of any vacancy of the office of chief constable by death or otherwise, have all the powers, privileges, and duties of the chief constable: but no such deputy shall continue to act with the powers of chief constable during any vacancy of the office, for more than three calendar months after the vacancy has been occasioned. 2 & 3 *Vict. c.* 97, *s.* 7.

Superintendents.] By stat. 3 & 4 Vict. c. 88, s. 26, reciting that it hath been found unnecessary that a superintendent be appointed for every petty sessional division of a county in which the first recited Act has been adopted: it is enacted, that the justices in general or quarter session assembled, may, with the approval of one of Her Majesty's principal secretaries of state, direct how many of the constables shall be appointed superintendents, and direct the appointment of inspectors and

serjeants and other subordinate officers, with such gradations of rank and pay and such variety of duties as shall be found expedient; and the justices may make such orders as to them shall appear expedient touching the attendance of the superintendents, inspectors, serjeants, or other subordinate officers among the said constables upon the justices at their several sessions. 3 & 4 *Vict. c.* 88, *s.* 26.

And every superintendent appointed under this Act, shall, on the first day of every month, send to the chief constable a return showing the actual disposition and number of the constables of the county under his superintendence during the preceding month, which return shall specify the changes made from time to time therein, as well in number as by name; and the chief constable shall send a copy of all such returns to the clerk of the peace for the county, to be laid before the justices of the peace at their next general or quarter sessions of the peace. *Id. s.* 32.

Appointment of the petty constables.] And, subject to the approval of two or more of the justices of the county in petty sessions assembled, the chief constable shall appoint the other constables to be appointed for the county, and a superintendent to be at the head of the constables in each division of the county, and at his pleasure may dismiss all or any of them, and shall have the general disposition and government of all the constables so to be appointed, subject to such lawful orders as he may receive from the justices in general or quarter session assembled or at any adjournment thereof, and to the rules established for the government of the force. 2 & 3 *Vict. c.* 93, *s.* 6.

And no constable appointed under this Act, shall be at liberty to resign his office, or to withdraw himself from the duties thereof, unless expressly allowed so to do, in writing, by the chief constable or superintendent under whom he may be placed, or unless he shall give to such chief constable or superintendent one calendar month's notice of his intention; and every constable who shall so resign or withdraw himself without such leave or notice, shall be liable, on being convicted thereof before any two justices of the peace for the county, to forfeit all arrears of pay then due to him, or to a penalty of not more than five pounds. *Id. s.* 13.

Also, all chief or other constables appointed under this Act, shall be restrained from employing themselves in any office or employment for hire or gain, other than in the execution of their duties under this Act, and shall be exempt from being returned and from serving upon any juries or inquest whatsoever, or in the militia, nor shall they be inserted in any jury lists while they shall continue to be such constables. *Id. s.* 10.

And every person, not being a constable appointed under this Act, who shall have in his possession any article being part of the clothing, accoutrements or appointments supplied to any such constable, and who shall not be able satisfactorily to account for his possession thereof,—or who shall put on the dress, or take the name, designation, or character of any person appointed as such constable, for the purpose of thereby obtaining admission into any house or other place, or of doing or procuring to be done any act which such person would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose,—shall, in addition to any other punishment to which he may be liable for such offence, be liable on being convicted thereof before any two justices of the peace for the county, to a penalty of not more than ten pounds. *Id. s.* 15.

How regulated.] And whereas it is expedient that the rules for the government, pay, clothing, and accoutrements, and necessaries of such constables as may be appointed under this act, be uniform, as nearly as it may be; be it enacted, that rules shall be from time to time made by one of Her Majesty's principal secretaries of state, but not so as to increase the number of men proposed to be appointed; and the rules so made shall be sent to the clerk of the peace for each county in which or in any division of which this Act shall be in operation; and it shall be lawful for the secretary of state, upon the representation of the justices of the county setting forth any special reasons, to amend or add to such rules so as to make them applicable to the special circumstances of such county, and all such rules shall be binding on all persons whom they may concern; and copies of all such rules shall be laid before both houses of parliament within six weeks after the making thereof, if parliament is then sitting, and if parliament is not sitting then within six weeks after the next meeting of parliament. *Id. s.* 3.

Station-houses.] By stat. 3 & 4 Vict. c. 88, s. 12, the justices in general or quarter session assembled of any county in which or in any part of which constables shall be appointed under the first-recited Act, may, if they think fit, order that station-houses and strong rooms, or either of them, for the temporary confinement of persons taken into custody by the constables, be provided in such places as the said justices shall think fit, and upon such plan as shall be approved by one of Her Majesty's principal secretaries of state, and for that purpose may purchase and hold lands and tenements, or appropriate to that purpose any lands or tenements belonging to the county which are not needed for the purpose to which they were applied or intended to be applied before such appropriation: and the ex-

pense of building, hiring, or otherwise providing, repairing, and furnishing such station-houses and strong rooms shall be defrayed out of the police-rates.

And the justices in general or quarter session assembled may borrow money for the purpose of purchasing any such lands and tenements, or of building any such station-houses and strong rooms, and to charge the future police-rates with the amount of the loan, and with interest thereon: provided always, that any money borrowed for such purpose shall be repaid by yearly instalments, not less than one-twentieth part of the sum borrowed, with interest on the same, in any one year. *Id. s.* 13.

Their exemption from toll.] No toll shall be demanded or taken on any turnpike road or bridge, for any horse, or police van, carriage, or cart, passing along such road or bridge, in the service of the police establishment under the provisions of the said act; provided that the constable in charge of such horse, van, carriage, or cart, if not the chief constable, shall produce an order in writing under the hand of the chief constable, or shall have his dress according to the regulations of the police force at the time of claiming the exemption; and every person who shall fraudulently claim or take the benefit of the exemption from toll herein contained, not being lawfully entitled thereunto, shall for every such offence be liable to a penalty of not more than five pounds; and in all such cases the proof of such exemption shall be upon the person claiming the same. 3 & 4 *Vict. c.* 88, *s.* 1.

Their powers and duties.] The chief constable and other persons so appointed, shall be sworn as constables before a justice of the county, and shall have all the powers, privileges, and duties throughout the county, and also in all liberties and franchises and detached parts of other counties locally situated within such county, and also in any county adjoining to the county for which they are appointed, which any constable duly appointed has within his constablewick by virtue of the common law, or of any statute made or to be made; and every provision of stat. 1 & 2 W. 4, c. 41, [as to special constables, *see post*, p. 350,] shall be deemed to extend to the constables appointed under this Act, except as to the manner of their appointment and dismissal, the time for which they shall serve, and the manner in which their allowances shall be paid, or as to any matter herein expressly otherwise provided. 2 & 3 *Vict. c.* 93, *s.* 8. *See Jones* v. *Nicholls and Roberts*, 13 *Mees.* & *W.* 361. As to any other duties, they will of course be specified in the rules mentioned in sect. 3, *ante*, p. 329.

And by stat. 3 & 4 Vict. c. 88, s. 33, whenever a warrant of commitment of any person to any gaol or house of correction, shall be directed and delivered to any constable, in any county

in which constables shall have been appointed under the said Act of the last session of parliament, it shall be lawful for the justice or justices by whom such warrant shall be signed, if he or they shall think fit, in and by such warrant, to command the constable to whom the warrant is directed, and all other constables to whom the warrant shall be successively delivered as herein-after provided, to convey and deliver the body of the person so committed, with the warrant, into the custody of the constable who shall be in attendance at the nearest or most convenient station-house or strong room belonging to the said police force lying in the way towards the said gaol or house of correction, or to such other constable as shall be appointed by the regulations of the police force to take charge of persons so committed; and every constable, into whose custody any such person shall be so successively delivered, shall endorse upon the warrant a certificate in writing under his hand of the delivery of such person into his custody, and the time and place of such delivery, and such certificate shall discharge the constable so delivering over the body of such person from further execution of the warrant; and it shall be lawful for any constable into whose custody such persons shall have been so delivered, to complete the execution of the warrant, by conveying and delivering the body of such person either to the said gaol or house of correction, or into the custody of the constable in attendance at the next station-house or strong room as aforesaid, or to such other constable as shall be appointed by the regulations of the police force to assist in taking charge of persons so committed; and every constable into whose custody any person shall be so delivered, and who shall have endorsed such certificate upon the warrant, shall have the same powers, privileges and protections for and in the execution of such warrant, as if the same had been originally directed to him by name.

Neglect of duty.] Every constable appointed under this Act, who shall be guilty of any neglect or violation of duty in his office of constable, and shall be convicted thereof before any two justices of the peace for the county, shall be liable to a penalty of not more than ten pounds, the amount of which penalty may be deducted from any salary then due to such offender; or in the discretion of the justices by whom he shall be convicted, he may be imprisoned, with or without hard labour, for any time not more than one calendar month. 2 & 3 *Vict. c.* 93, *s.* 12.

Publicans harbouring them.] And if any victualler, or keeper of any house, shop, room, or other place for the sale of any liquors, whether spirituous or otherwise, shall knowingly harbour or entertain any constable belonging to the said force, or

permit such constable to abide or remain in his house, shop, room, or other place, during any part of the time appointed for his being on duty: every such victualler or keeper as aforesaid, being convicted thereof before any two justices of the peace for the county, shall for every such offence forfeit and pay such sum, not exceeding five pounds, as they shall think meet. *Id. s.* 16.

Their dismissal.] The chief constable, we have seen, may be dismissed by the justices in quarter sessions; *Id. s.* 4, *see ante*, p. 326; and the petty constables may be dismissed by the chief constable. *Id. s.* 6. *See ante*, p. 328. And every constable appointed under this Act, who shall be dismissed from or shall cease to hold and exercise his office, and who shall not forthwith deliver over all the clothing, accoutrements, appointments, and other necessaries, which may have been supplied to him for the execution of his duty, to the chief constable or superintendent, or to such person and at such time and place as shall be directed by the said chief constable or superintendent,—shall be liable, on being convicted thereof before any two justices of the peace for the county, to imprisonment, with or without hard labour, for any time not exceeding one calendar month; and it shall be lawful for any justice of the peace to issue his warrant to search for and seize, to the use of the county police, all the clothing, accoutrements, appointments, and other necessaries which shall not be so delivered over, wherever the same shall be found. *Id. s.* 14.

And by stat. 3 & 4 Vict. c. 88, s. 24, "if justices of the peace of any county, in general or quarter sessions assembled, shall be of opinion that the constables appointed under the first-recited Act or under this Act are no longer needed in their county, it shall be lawful for the justices assembled as aforesaid to report that opinion to one of Her Majesty's principal secretaries of state, six months' notice of the intention to propose that such report be made having been first given as is by the said Act provided with regard to any business relating to the adoption of the said Act; and if three-fourths of the justices assembled at any such general or quarter sessions of the peace, after such notice given, shall resolve upon making such report, and such report shall be approved by one of Her Majesty's principal secretaries of state, the said constables shall be discontinued at such time as shall be mentioned in the report; and any balance of monies which shall have been raised for the purposes of the said Act, after payment of all expenses legally chargeable thereon, shall be carried to the account of the county-rate."

Consolidation of the borough and county police.] By stat. 3 & 4 Vict. c. 88, s. 14, "the justices of any county in which

constables shall have been appointed under the said Act, and the council of any incorporated borough situated in or adjoining to such county, may agree together for the consolidation of the county and borough police establishments; and in every such case all the constables appointed either for the county or the borough shall have all the powers, privileges, and duties throughout the county and the borough, which constables appointed for any county have within that county under the said Act, and all the provisions of the said Act shall be taken to apply to the borough constables as well as to the county constables, except as is herein otherwise provided; and every such agreement, which shall have been agreed to by the justices of the county in general or quarter session assembled, on the one hand, and by the mayor, aldermen, and burgesses of the borough, by their council, on the other hand, shall be binding on both parties, as soon as a memorandum of such agreement under the hands of two or more justices of the county, and countersigned by the clerk of the peace, shall be delivered to the council of the borough, and a counterpart thereof under the common seal of the borough shall be delivered to the justices; and when any such agreement shall have been made between any county and any borough, either party shall be empowered to put an end thereunto, without the consent of the other party, after six months' notice in writing shall have been given to the other party; such notice, if given by the county, to be under the hands of two or more justices, and countersigned by the clerk of the peace, or, if given by the borough, to be under the common seal of the borough: provided always, that no such notice shall be given by the justices, or by the borough, unless in either case such notice shall be agreed upon by a majority of three-fourths of the justices attending at any general or quarter session, or three-fourths of the council of the borough."

And in all cases where the establishment of county and borough constables shall be consolidated into one police establishment, the chief constable of the county shall have the general disposition and government of all such constables, subject to the provisions hereinafter contained, and at his pleasure may dismiss all or any of them; and whenever the chief constable shall dismiss one of the borough constables, he shall report the fact, with his reasons for the dismissal, to the mayor of the borough, and the watch committee of the borough shall forthwith appoint another constable properly qualified, unless provision shall be made in such agreement that all such constables shall be appointed by the chief constable; and no borough constable who shall have been dismissed by the chief constable shall be capable of being re-appointed for the same borough, without the consent of the chief constable; and so much of the said Act for regulating corporations as empowers

the said committee, or any two justices of the peace having jurisdiction within the borough, to dismiss any constable, shall be suspended, as to those boroughs whose establishment of constables is consolidated with the establishment of county constables, during the time that any agreement for such consolidation shall be in force. *Id. s.* 15.

Local constables.] By stat. 3 & 4 Vict. c. 88, s. 16, "the chief constable shall make out, and cause to be laid before the justices acting in and for every petty sessional division of the county, at one of their special sessions holden for hearing appeals against the poor-rates, a list, signed by him, of fit persons residing within every parish, township, and place within the division, willing in case of need to serve as local constables during the year then next ensuing, for doing all things which belong to the office of constable within such parish, township, or place; and the justices of each of such divisions, at any time, in petty sessions assembled, shall select from the persons named in such list so many local constables as they shall think fit to appoint for every such parish, township, or place, and shall cause to be administered to them the following oath: (that is to say,)

'*I, A. B. do swear, that I will well and truly serve our Sovereign Lady the Queen, in the office of local constable for the parish* [or *township, &c.*] *of* ——, *for the year ensuing, or until another shall be sworn in my stead, according to the best of my skill and knowledge. So help me God.*'

And all such local constables shall be subject to the authority of the chief constable, and to such regulations as shall be made for their government by one of Her Majesty's principal secretaries of state, and shall have within the whole county, and also within all liberties and franchises, and detached parts of other counties situated therein, and also in every county adjoining to the county in which they are appointed, all the powers, privileges, and immunities, and shall be liable to all the duties and responsibilities, of a constable within his constablewick, but shall not be bound to act as constable beyond the parish, township, or place for which they are severally appointed and sworn; and the chief constable, from time to time, shall cause a list to be printed and published of the persons so appointed and sworn as local constables within each division, with the names of the places for which they are severally appointed."

Proviso as to certain constables.] By stat. 3 & 4 Vict. c. 88, s. 90, reciting that an Act was passed in the fourth year of the reign of His late Majesty [3 & 4 W. 4, c. 90], making provisions for the lighting and watching parishes in England and Wales, and divers acts have been made authorizing the ap-

pointment of constables and watchmen, by day or night, in sundry towns and places within the counties in which the first-named Act may be put in force, and authorizing rates to be made and levied for the purpose of defraying the expenses of such constables or watchmen: it is enacted, "That notwithstanding any thing contained in the said Act of the last session of parliament, the constables or watchmen appointed in and for any parish under the Act of the fourth year of the reign of His late Majesty, or in and for any town or place under any such local Act as last aforesaid, and not discontinued before the passing of this Act, shall continue to act in their respective appointments, and shall be subject to the same authorities as heretofore; and all such acts shall continue in force until it shall be notified by the chief constable of the county, in which such parish, town or place is situated, to the inspectors, commissioners or other persons having authority over such constables or watchmen as aforesaid, by writing under his hand, that he is ready to undertake the charge of such parish, town, or place on some day to be specified in the notice, which notice shall be published within such parish, town, or place, in such manner as shall seem fit to the chief constable, for the purpose of making the same to be generally known; and upon the day so named the watchmen or constables appointed within such parish, town or place, under the said Act of the fourth year of the reign of His late Majesty, or under such local Act, shall be discontinued as a separate force; and all powers for assessing and levying any rate in such parish, town or place, the whole or any part of which shall be applicable to the payment of such watchmen or constables, or any expenses incident thereunto, shall cease, so far as such powers relate to any whole rate so applicable, or to that part of any rate which shall be so applicable, except for such purposes as are hereinafter mentioned: provided always, that notwithstanding any thing in the first-named act contained, the powers of all such acts shall enure for the purpose of enabling the inspectors, commissioners, or other persons charged with the execution of any such act, to make such application as aforesaid to the chief constable of the county for the appointment in any such town or place of an additional number of constables, and to assess and levy such rates as are authorized by the said Acts in each case for defraying the expenses of constables or watchmen, and to apply them in defraying the expense of so many additional constables in such town or place respectively, as the chief constable, on their application, and with the approval of the justices as aforesaid, shall appoint there: provided also, that where any parish, town, or place in which constables have been appointed under any such local Act, shall be situated in more than one county, such notice shall not be given by the

chief constables of either county to the commissioners or other persons having authority over the constables in such parish, town or place, until after constables shall have been appointed under the first-recited Act in each of such counties." *Id. s.* 20.

And "upon the day mentioned in such notice as last aforesaid, all watch-houses and watch-boxes in any such parish or place, and all arms, accoutrements, and other necessaries provided at the public expense for the watchmen or constables therein, shall be given up to such persons as shall be named by the said chief constable, for the use and accommodation of the constables to be appointed under the first-recited Act: and in case any person having the charge, control, or possession of any watch-house, watch-box, arms, accoutrements, or necessaries as aforesaid, shall neglect or refuse to give up the same as herein-before required, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence, forfeit and pay, over and above the value of the property not given up, such sum, not exceeding five pounds, as the said justices shall think meet; and where there shall be any building in any such parish or place as aforesaid, a part only of which building shall have been heretofore used as a watch-house, such part shall be given up every day, from the hour of four in the afternoon until the hour of nine in the forenoon, for the use and accommodation of the constables to be appointed under the first-recited Act; and if any person, having the charge, control, or possession of any such building, shall neglect or refuse to give up such part thereof, for the purposes aforesaid, or to permit free access thereto or egress therefrom during any portion of the time above prescribed, every such offender, being convicted thereof before any two justices of the peace, shall for every such offence forfeit and pay such sum, not exceeding five pounds, as the said justices shall think meet." *Id. s.* 21.

And "any rate authorized by the said Act of the fourth year of the reign of His late Majesty, or by any such local Act, for defraying the expenses of the constables or watchmen in any parish or place made previous to the day on which the said chief constable shall undertake the charge thereof, shall be levied and collected in the same manner as if the first-recited Act or this Act had not been passed; and that nothing herein contained shall be deemed to affect or alter any powers or authorities for assessing and levying any rate in any such parish or place, so far as such rate may relate to paving, lighting, cleansing, or any other object, except the constables or watchmen or any expenses incident thereto." *Id. s.* 22.

"And whereas there are certain parishes and places in which monies have been borrowed or advanced, and debts contracted, under some one or more of such acts as last afore-

said for the building of watch-houses, and for various expenses connected with the constables or watchmen therein, and such monies and debts remain unpaid, and it is expedient that the same be discharged; be it enacted, that all such monies and debts in any parish or place of which the said chief constable shall undertake the charge shall, notwithstanding any thing herein-before contained, be chargeable upon the rates out of which such monies or debts have been heretofore in part paid, or would have been payable if the first-recited Act or this Act had not been passed, and such rates shall be from time to time assessed and levied for the payment of such monies and debts until the same shall be entirely discharged and satisfied." *Id. s.* 23.

Their pay, fees, &c.] The pay is regulated by the rules mentioned in 2 & 3 Vict. c. 93, s. 3, *ante*, p. 329. Also, in addition to the salary to be paid to the chief constable, reasonable allowances shall be made to him for extraordinary expenses necessarily incurred by him, and by the constables under his orders, in the apprehension of offenders, and in the execution of his and their duty under this Act; which allowances shall be examined and audited by the justices of the county in quarter sessions assembled. *Id. s.* 18. *See R.* v. *Chelmsford*, 5 *Q. B.* 66.

And by stat. 3 & 4 Vict. c. 88, s. 17, "The justices of the county, in general or quarter session assembled, shall from time to time, subject to the approval of one of Her Majesty's principal secretaries of state, settle tables of fees and allowances for the service of summonses and execution of warrants, and for the performance of the other occasional duties which may be required of the said local constables; and whenever any duty, for which any such fee or allowance shall have been settled, shall be performed by one of the constables appointed under the first-recited Act, the amount thereof shall be accounted for and paid to the treasurer of the county, or such other person as shall be appointed by the justices to receive the same, and shall be applied towards defraying the expenses of putting the said Act in execution; and when such duty shall have been performed by one of the local constables appointed under this Act, the amount of the fee or allowance shall be paid to such local constable, under such regulations as shall be made from time to time by the justices in general or quarter session assembled."

And "the justices usually acting in and for every division, shall take care that full, true, and particular accounts be kept of all such fees and allowances within their division, and shall once in every quarter of a year cause an account, with all proper vouchers for verifying the same, to be delivered to the treasurer of the county or other person appointed to receive the same." *Id. s.* 18.

The expenses how provided for.] And for the purposes of defraying the expenses of putting the Act of 2 & 3 Vict. c. 93, in execution in any county in which, or in any part of which, the said Act shall be put in force, it is enacted by stat. 3 & 4 Vict. c. 88, s. 3, that "the justices of such county, in general or quarter session assembled, shall make a fair and equal police rate, and for that purpose shall assess and tax the whole district for which the constables are appointed rateably and equally, according to a certain pound rate of the full and fair annual value of all messuages, lands, tenements, and hereditaments liable to the county rate, or which, if the whole of the said district were to all intents and purposes within their county, would be liable to the county rate therein, including all detached parts of other counties, and also all liberties and franchises (except as herein-after excepted) which are locally situated in such county, or wholly or partly surrounded by such county, and declared by the said Act to be considered as forming part of such county for the purposes of the said Act, but excluding all detached parts of the said county, all parts of the county contributing to the police rate of any other county or to the metropolitan police rate, and all incorporated boroughs which are or shall be within the provisions of an Act passed in the sixth year of the reign of His late Majesty, for regulating corporations, or of any charter granted in pursuance of the last-recited Act, or of any Act made for the amendment thereof, and all those towns and places for which constables or watchmen shall have been appointed under the Act passed in the fourth year of His late Majesty, making provisions for the lighting and watching of parishes in England or Wales, or any local Act authorizing the appointment of constables or watchmen in any town or place, and authorizing rates to be made for defraying the expenses of such constables or watchmen, and shall not be discontinued before the passing of this Act, until they shall be discontinued, or until the chief constable of the county within which, for the purposes of this and the said first-recited Act, such parish, town, or place is situated, shall have notified, as he is herein-after empowered to do, that he is ready to undertake the charge of such parish, town, or place [*see ante*, p. 335]: provided always, that all expenses of putting the said Act in execution before the passing of this Act, shall be paid out of the county rate, as if this Act had not been made." 3 & 4 *Vict. c.* 88, *s.* 3.

And the value of all property rateable for the purposes of the said Act, shall be computed by the said justices according to the last valuation for the time being acted upon in assessing the county rate or liberty rate, or rate in the nature of a county rate (if any), to which such property is rateable, unless, in the case of any liberty or franchise or detached part of any county, the justices of the county, in which such liberty or

franchise or detached part is situated, shall be dissatisfied with such valuation. *Id. s.* 4.

And every police rate which the justices shall have made as aforesaid, shall be collected in their county from the persons who are liable to contribute thereunto, with and as part of the county rate, and the warrants issued by the justices to the high constables, and by the high constables to the overseers and others required to collect the county rates, shall distinguish between the rates to be levied from those places which are liable to the police rate in that county, and those which are not liable thereunto, and shall state how much is levied for the county rate, and how much for the police rate, and the said rates shall be levied accordingly. *Id. s.* 5.

And the justices of any county, in general or quarter session assembled, may, for the purpose of obtaining the sum which ought to be contributed from any detached part of any other county, or any liberty or franchise not contributing to the county rate of such first-mentioned county, towards any such police rate, from time to time issue a warrant under the hands of two or more of them, by which warrant they shall require the treasurer of the county to which such detached part belongs, or the treasurer or other person (if any) having the receipt of any liberty rate, or rate in the nature of a county rate levied within such liberty, to pay to the treasurer of such first-mentioned county, out of the monies collected by way of county rate, liberty rate, or rate in the nature of a county rate, the amount mentioned in the warrant; and that the person to whom any such warrant shall be directed shall, within forty days from the delivery of such warrant to him, pay the amount to the treasurer of the county from which such warrant shall have issued, and shall be allowed for the same in his accounts with his county or liberty; and every such warrant shall specify the rate in the pound at which the sum mentioned therein shall be computed." *Id. s.* 6.

And for the purpose of reimbursing the treasurer or other person by whom any such sum shall have been paid, the justices of the county to which such detached part belongs, or of the liberty or franchise, as the case may be, shall order a police-rate to be made, at the rate mentioned in the warrant, upon such detached part of their county, or upon such liberty or franchise respectively, which shall be levied and collected thereon with and as part of the county rate, liberty rate, or rate in the nature of a liberty rate, to which such detached part of a county or such liberty or franchise is liable, in like manner as the police-rate is levied and collected by order of the justices of any county for the expenses of the police of their own county." *Id. s.* 7.

"And if payment shall not be made within the said forty days, according to the exigency of the warrant, or if there shall

The expenses how provided for.] And for the purposes of defraying the expenses of putting the Act of 2 & 3 Vict. c. 93, in execution in any county in which, or in any part of which, the said Act shall be put in force, it is enacted by stat. 3 & 4 Vict. c. 88, s. 3, that "the justices of such county, in general or quarter session assembled, shall make a fair and equal police rate, and for that purpose shall assess and tax the whole district for which the constables are appointed rateably and equally, according to a certain pound rate of the full and fair annual value of all messuages, lands, tenements, and hereditaments liable to the county rate, or which, if the whole of the said district were to all intents and purposes within their county, would be liable to the county rate therein, including all detached parts of other counties, and also all liberties and franchises (except as herein-after excepted) which are locally situated in such county, or wholly or partly surrounded by such county, and declared by the said Act to be considered as forming part of such county for the purposes of the said Act, but excluding all detached parts of the said county, all parts of the county contributing to the police rate of any other county or to the metropolitan police rate, and all incorporated boroughs which are or shall be within the provisions of an Act passed in the sixth year of the reign of His late Majesty, for regulating corporations, or of any charter granted in pursuance of the last-recited Act, or of any Act made for the amendment thereof, and all those towns and places for which constables or watchmen shall have been appointed under the Act passed in the fourth year of His late Majesty, making provisions for the lighting and watching of parishes in England or Wales, or any local Act authorizing the appointment of constables or watchmen in any town or place, and authorizing rates to be made for defraying the expenses of such constables or watchmen, and shall not be discontinued before the passing of this Act, until they shall be discontinued, or until the chief constable of the county within which, for the purposes of this and the said first-recited Act, such parish, town, or place is situated, shall have notified, as he is herein-after empowered to do, that he is ready to undertake the charge of such parish, town, or place [*see ante*, p. 335]: provided always, that all expenses of putting the said Act in execution before the passing of this Act, shall be paid out of the county rate, as if this Act had not been made." 3 & 4 *Vict. c.* 88, *s.* 3.

And the value of all property rateable for the purposes of the said Act, shall be computed by the said justices according to the last valuation for the time being acted upon in assessing the county rate or liberty rate, or rate in the nature of a county rate (if any), to which such property is rateable, unless, in the case of any liberty or franchise or detached part of any county, the justices of the county, in which such liberty or

franchise or detached part is situated, shall be dissatisfied with such valuation. *Id. s.* 4.

And every police rate which the justices shall have made as aforesaid, shall be collected in their county from the persons who are liable to contribute thereunto, with and as part of the county rate, and the warrants issued by the justices to the high constables, and by the high constables to the overseers and others required to collect the county rates, shall distinguish between the rates to be levied from those places which are liable to the police rate in that county, and those which are not liable thereunto, and shall state how much is levied for the county rate, and how much for the police rate, and the said rates shall be levied accordingly. *Id. s.* 5.

And the justices of any county, in general or quarter session assembled, may, for the purpose of obtaining the sum which ought to be contributed from any detached part of any other county, or any liberty or franchise not contributing to the county rate of such first-mentioned county, towards any such police rate, from time to time issue a warrant under the hands of two or more of them, by which warrant they shall require the treasurer of the county to which such detached part belongs, or the treasurer or other person (if any) having the receipt of any liberty rate, or rate in the nature of a county rate levied within such liberty, to pay to the treasurer of such first-mentioned county, out of the monies collected by way of county rate, liberty rate, or rate in the nature of a county rate, the amount mentioned in the warrant; and that the person to whom any such warrant shall be directed shall, within forty days from the delivery of such warrant to him, pay the amount to the treasurer of the county from which such warrant shall have issued, and shall be allowed for the same in his accounts with his county or liberty; and every such warrant shall specify the rate in the pound at which the sum mentioned therein shall be computed." *Id. s.* 6.

And for the purpose of reimbursing the treasurer or other person by whom any such sum shall have been paid, the justices of the county to which such detached part belongs, or of the liberty or franchise, as the case may be, shall order a police-rate to be made, at the rate mentioned in the warrant, upon such detached part of their county, or upon such liberty or franchise respectively, which shall be levied and collected thereon with and as part of the county rate, liberty rate, or rate in the nature of a liberty rate, to which such detached part of a county or such liberty or franchise is liable, in like manner as the police-rate is levied and collected by order of the justices of any county for the expenses of the police of their own county." *Id. s.* 7.

"And if payment shall not be made within the said forty days, according to the exigency of the warrant, or if there shall

be no person to whom such warrant can be directed, or no county rate, liberty rate, or rate in the nature of a county rate, to which the inhabitants of such liberty or detached part of another county contribute, or if the justices of the first-named county shall be dissatisfied with the valuation upon which such rate was assessed, or if, for any other reason, it shall seem more convenient to the justices of the first-mentioned county, it shall be lawful for them to levy the full amount of the police rate upon any such detached part of another county or liberty or franchise in respect of which such amount is demandable; and for the purpose of levying and collecting such rates, the justices of such first-mentioned county shall have, within every such detached part of another county and within every such liberty and franchise respectively, the same powers which they have for levying and collecting county rates within the limits of their own commission; and such rates may be levied and collected by the like methods, and subject to the same right of appeal, as if such detached parts of another county or such liberty or franchise respectively were part of such first-mentioned county, and within the hundred, wapentake, ward, rape, lathe, or such other division of the county in which they are locally situated, or, if not wholly lying in one hundred, wapentake, ward, rape, lathe, or such other division, in that one with which they have the longest common boundary respectively; and the high constable of every such hundred, wapentake, ward, rape, lathe, or such other division, on the receipt of a warrant to that effect under the hands of two or more of the said justices, shall collect the said rates; and the overseer of the poor, or in default of overseers, or in case there shall be no separate rate for the relief of the poor in any portion of such detached parts or liberty or franchise, such person or persons as the justices of the first-mentioned county in quarter session assembled shall appoint for that purpose in every parish and place to which such detached parts or liberty or franchise, or any part thereof, belong, upon receipt of a warrant to that effect from such high constable, shall pay the amount assessed upon their parish or place respectively, or upon that part of it which is liable thereunto, in like manner, and subject to the like penalties in case of default, as if such detached parts or liberty or franchise were part of such first-mentioned county, and within such hundred, wapentake, ward, rape, lathe or other division as aforesaid respectively." *Id. s.* 8.

"The treasurer of any county, or any person having an order for that purpose under the hand of such treasurer, may inspect any county rate made or to be made for any other county or liberty or franchise, the inhabitants of any part of which shall be liable to be rated to the police rate in the first-named county, and may also inspect any returns concerning all or any of the parishes, townships, precincts, and places,

whether parochial or extra-parochial, the inhabitants of which are liable to be rated as aforesaid, which have been or are to be delivered in pursuance of any of the Acts relating to county rates, and may take copies or extracts from any such rates or returns, without payment of any fee or reward; and if any person having the custody of any such rate or return shall wilfully neglect or refuse to permit any such treasurer or other person authorized as aforesaid to inspect the same, or to take copies or extracts from the same, within two days after such order shall have been produced and shown to him, or a copy thereof left at his usual place of abode, he shall on conviction thereof before any two justices of the peace, forfeit and pay for every such offence such sum not exceeding ten pounds as they shall think meet." *Id. s. 9.*

Superannuation fund.] By stat. 3 & 4 Vict. c. 88, s. 10, "there shall be deducted from the pay of every constable belonging to the police force established in any county under the first-recited Act, a sum after such yearly rate as the justices of the county in general or quarter session assembled shall direct, not being a greater sum than two pounds ten shillings in a hundred pounds, which sum so deducted, and also the monies accruing from stoppages from any of the said constables during sickness, and fines imposed on any of the said constables for misconduct, and from any portion of the fines imposed by any justice of the peace upon drunken persons, or for assaults upon police constables, and from moieties of fines and penalties awarded to informers (being police constables) on summary convictions, as shall be directed by such justice to be paid for the benefit of this fund, and all monies arising from the sale of worn or cast clothing supplied for the use of the constables in any county,—shall from time to time be invested in such manner as the justices in general or quarter session assembled shall direct; and the interest and dividends thereof, or so much of the same as shall not be required for the purposes hereinafter mentioned, shall be likewise invested in the like manner, and accumulate so as to form a superannuation fund, and shall be applied from time to time for payment of such superannuation or retiring allowances or gratuities as may be ordered by the justices in general or quarter session assembled, upon the recommendation of the chief constable, at any time, to any of the said constables, as herein-after provided; and the justices shall guarantee the security of the superannuation fund of their county, and make good out of the county stock any deficiency which may arise in such fund from the default of any treasurer or other person intrusted with the custody or management thereof.

"And the justices may, upon such recommendation, if they shall think fit, order that any of the said constables may be

superannuated, and receive thereupon out of the superannuation fund a yearly allowance, subject to the following conditions, and not exceeding the following proportions; (that is to say,) that if he shall have served with diligence and fidelity for fifteen years and less than twenty years, an annual sum not more than half his pay; if for twenty years or upwards, an annual sum not more than two-thirds of his pay; provided that if he shall be under sixty years of age, it shall not be lawful to grant any such allowance, unless upon the certificate of the chief constable that he is incapable, from infirmity of mind or body, to discharge the duties of his office; provided also, that if any constable shall be disabled from any wound or injury received in the actual execution of the duty of his office, it shall be lawful to grant him any allowance not more than the whole of his pay; but nothing herein contained shall be construed to entitle any constable absolutely to any superannuation allowance, or to prevent him being dismissed without superannuation allowance." *Id. s.* 11.

Private constables.] By stat. 3 & 4 Vict., c. 88, s. 19, "The chief constable of any county, with the approval of the justices of the county in general or quarter session assembled (if he shall think fit,) on the application of any person or persons showing the necessity thereof, may appoint and cause to be sworn in any additional number of constables, at any place within the limits of his authority, at the charge of the person or persons by whom the application shall be made, but subject to the orders of the chief constable, and for such time as he shall think fit; and every such constable shall have all the powers, privileges, and duties of other county constables: provided always, that it shall be lawful for the person or persons on whose application such appointment shall have been made, upon giving one calendar month's notice in writing to the chief constable, to require that the constables so appointed shall be discontinued; and thereupon the chief constable shall discontinue such additional constables."

Notice of proceedings under this Act.] With the usual notice of the time of holding any such general or quarter session or adjournment thereof, as now required by law, notice shall be given of the day and hour at which any business relating to the adoption of this Act, or the appointment or dismissal of any chief constable under this Act, or the increase or diminution of the number of constables, will begin at such session; and the clerk of the peace of each county shall give such notice as last mentioned, on the requisition of any five justices acting for such county. 2 & 3 *Vict., c.* 93, *s.* 5.

And by stat. 3 & 4 Vict., c. 88, s. 30, it is provided, That with the notice of the time of holding any such general or

quarter session or adjournment thereof, as now required by law, notice shall be given of the day and hour at which any business relating to the adoption of the provisions of this Act will be considered at such session.

5. *Constables on Canals and Navigable Rivers.*

Their appointment.] By stat. 3 & 4 Vict., c. 50, s. 1, reciting that "robberies and other outrages are frequently committed on canals and navigable rivers throughout England and Wales, and it is expedient that power be given to appoint constables for better keeping the peace, and for the prevention and detection of crime along the line of such canals and rivers, and in the neighbourhood thereof:" it is enacted that "any two justices of the peace, or the watch committee of any incorporated borough, within their several jurisdictions, on the application of the committee or board of directors acting in the management of the affairs of the company of proprietors of any canal or navigable river, or of any clerk or agent of any such company, duly authorized by such committee or board of directors, may appoint so many persons as they shall think fit from among those who shall be recommended to them for that purpose by such company of proprietors, clerk, or agent, to act as constables on and along such canal or river; and every person so appointed shall take an oath or make a solemn declaration, in the form or to the effect following: (that is to say,)

I, A. B., having been appointed a constable to act upon and along the [name the canal or navigable river], *under the provisions of* [here insert the title of this Act,*] *do swear that I will well and truly serve our sovereign Lady the Queen, in the said office of constable, without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept, and prevent all offences against the peace, and that while I continue to hold the said office, I will, to the best of my skill, and knowledge, discharge the duties thereof faithfully according to law. So help me God.*

Such oath or declaration to be administered by any one such justice.

And "all the powers hereby vested in any company of proprietors of any such canal or navigable river, may be exercised by the directors or committee of management, or other body of persons, under whatever style or name they may be known, duly authorized according to the constitution of such company to manage the affairs of such company respectively, and if there shall be no such body, or more than one such body, so that it may be doubtful by whom the said powers ought to be

* "An Act to provide for keeping the peace on canals and navigable rivers."

exercised, then by such body of persons as shall be appointed for that purpose by the proprietors at any general or special meeting of the proprietors convened for that purpose, with the like forms and notices as are required by law in each case respectively with regard to such meetings." *Id. s.* 20.

How and by whom paid.] "Every such company of proprietors may pay to every such constable, out of the monies and effects of the company, such salary or allowances, and at such times, and in such manner, as the company shall think fit." *Id. s.* 3.

Their power and duties.] "Every person so appointed, and having taken such oath or made such declaration as aforesaid, shall have full power to act as constable for the preservation of the peace, and for the security of persons and property against felonies and other unlawful acts, on such canal or river, and the towing paths and works belonging thereto, and on and within any railways, tramroads, wharfs, quays, locks, docks, landing places, warehouses, lands, and premises belonging to any such company, and in all places not more than one quarter of a mile distant from either bank of such canal or river, or from such railways, and shall have all such powers, protections, and privileges for the apprehending of offenders, as well by night as by day, and for doing all things for the prevention, discovery, and prosecution of felonies and other offences, and for keeping the peace, which any constable duly appointed has within his constablewick: provided always, that such power shall not extend to authorize any such person to act as such constable within the metropolitan police district, or the city of *London* and the liberties thereof, or in any places beyond the banks, towing paths, and other the premises belonging to such company, as may be situate within any other city or any incorporated borough." *Id. s.* 1.

And "every constable appointed as aforesaid, having just cause to suspect that any felony, or any other offence contrary to the provisions of this Act, has been or is about to be committed in or on board of any boat or other vessel lying in any such canal or river, or any lock or dock thereunto belonging, may enter at all times, as well by night as by day, into and upon every such boat or other vessel, and therein to take all necessary measures for the prevention or detection of all felonies or other offences, which he has just cause to suspect to have been or to be about to be committed, and to take into custody all persons suspected of being concerned in such felonies or other offences, and also to take charge of all property so suspected to be stolen or embezzled." *Id. s.* 9.

And "any such constable may take into custody, without a warrant, any loose, idle, and disorderly person, whom he shall find disturbing the public peace, or whom he shall have good

cause to suspect of having committed or being about to commit any felony, misdemeanor, or breach of the peace, or other offence contrary to the provisions of this Act, and every person whom he shall find, between sunset and the hour of eight in the morning, lying or loitering in or upon any towing-path, or in or upon any wharf, bridge, railway, quay, landing place, lock, dock, or upon the bank of any such canal or river, and not giving a satisfactory account of himself." *Id. s.* 10.

And "any person found committing any offence punishable upon summary conviction by virtue of this Act, may be taken into custody, without a warrant, by any constable, or may be apprehended by the owner of the property with respect to which the offence shall be committed, or by his servant, or any person authorized by him, and may be detained until he can be delivered into the custody of a constable, to be dealt with according to law; and every such constable may also stop, search, and detain any vessel, boat, cart, or carriage in or upon which there shall be reason to suspect that any thing stolen or unlawfully obtained may be found, and also any person who may reasonably be suspected of having or conveying in any manner any thing stolen or unlawfully obtained." *Id. s.* 11.

Neglect of duty.] "Every constable who shall be guilty of any neglect or breach of duty in his office of constable, shall be liable to a penalty not more than ten pounds, the amount of which penalty may be deducted from any salary due to such offender, or (in the discretion of the magistrate before whom such offender shall have been convicted) such offender may be imprisoned in the gaol or house of correction for the county or place in which such offence shall have been committed, with or without hard labour, for any time not more than one calendar month." *Id. s.* 4.

Their dismissal.] "Any two justices, or the watch committee of any incorporated borough, may dismiss any such constable who shall act within their several jurisdictions; or the company of proprietors of any such canal or river for which any such constables shall be appointed, or any clerk or agent of such company, duly authorized by the committee or board of directors of such companies, may dismiss any such constable from his office of constable; and upon every such dismissal, all powers, protections, and privileges belonging to any such person by reason of such appointment, shall wholly cease, and no person so dismissed shall be capable of being again appointed, or acting as a constable for the same canal or river, without the consent of the authority by which he was dismissed." *Id. s.* 2.

And "every constable, who shall be dismissed from, or shall cease to hold his office, and who shall not forthwith deliver

over all the clothing, accoutrements, appointments, and all other necessaries which have been supplied to him for the execution of his duty, to such person and at such time and place as shall be directed by the company on whose recommendation he shall have been appointed, or by any clerk or agent of such company duly authorized by the company to receive the same, shall be liable to be imprisoned in any gaol or house of correction as aforesaid, with or without hard labour, for any time not exceeding one calendar month: and it shall be lawful for any justice of the peace to issue his warrant to search for and seize to the use of such company all the clothing, accoutrements, appointments, and other necessaries, which shall not be so delivered over, wherever the same may be found." *Id. s.* 5.

Assaulting them.] "Every person who shall assault or resist any constable, appointed as aforesaid, in the execution of his duty, or who shall aid or incite any person so to assault or resist, shall for every such offence be liable to a penalty not more than ten pounds, or (in the discretion of the magistrate before whom he shall be convicted) may be imprisoned in any gaol or house of correction as aforesaid, with or without hard labour, for any time not more than two calendar months." *Id. s.* 6.

Offences on such canals, railroads, &c.] And "every person who shall be found upon any such canal or river, or in or upon any lock, dock, warehouse, wharf, quay, or bank thereof, or on board of any boat or vessel lying or being in any such canal or river, or in any lock or dock thereunto belonging,—having in his possession or under his control any tube or other instrument for the purpose of unlawfully obtaining any wine, spirits, or other liquors or goods,—or having in his possession any skin, bladder, or other utensil, for the purpose of unlawfully secreting or carrying away any such wine, spirits, or other liquors or goods,—and any person who shall attempt unlawfully to obtain any such wine, spirit, or other liquors or goods —shall for every such offence be liable to a penalty not more than five pounds, or (in the discretion of the magistrate before whom he shall be convicted) may be imprisoned as aforesaid, with or without hard labour, for any time not more than one calendar month." *Id. s.* 7.

And "every person who shall bore, pierce, break, cut open, or otherwise injure any cask, box, or package containing wine, spirits, or other liquors, or any case, box, sack, wrapper, package, or roll of goods, on board of any boat, vessel, or waggon, or in or upon any warehouse, wharf, quay, or bank of or belonging to any such canal or river, with intent feloniously to steal, or otherwise unlawfully obtain, or to injure the contents, or any part thereof,—or who shall unlawfully drink

or wilfully spill, or allow to run to waste, any such liquors, or any part thereof,—shall for every such offence be liable to a penalty not more than five pounds over and above the value of the goods or liquors so taken or destroyed, or (in the discretion of the magistrate before whom he shall be convicted) may be imprisoned as aforesaid, with or without hard labour, for any time not more than one calendar month." *Id. s.* 8.

Provided that nothing herein contained shall be construed to prevent any person from being indicted for any indictable offence made punishable on summary conviction by this Act, or to prevent any person from being liable under any other Act or Acts to any other higher penalty or punishment than is provided for such offence by this Act; so nevertheless that no person be punished twice for the same offence. *Id. s.* 13.

"Any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed with respect to such property, or that the same or any part thereof has been stolen or unlawfully obtained, is hereby authorized, and (if in his power) is required, to apprehend and detain, and, as soon as may be, to deliver such offender into the custody of a constable, together with such property, to be dealt with according to law." *Id. s.* 12.

Proceedings for penalties, &c.] "Any two justices of the peace, within their several jurisdictions, shall be empowered summarily to convict any person charged with any offence against this Act, on the oath of one or more witnesses, or by confession of such person, and to award the penalty or punishment herein provided for such offence." *Id. s.* 14.

And, by sect. 16, the justices may cause the conviction to be drawn up in the following form of words, or to the like effect, (that is to say,)

County, city, or borough of —— to wit. } *Be it remembered, that on the —— day of —— in the year of our Lord ——, in the county of ——, A. E. is convicted before us J. P. and J. J. P., two of Her Majesty's justices of the peace for the said county, for that he the said A. E. did* [here specify the offence, and the time and place when and where the same was committed, as the case may be]; *and we do adjudge that the said A. E. shall for the said offence forfeit the sum of ——, and shall pay the same immediately* [or *shall pay the same on or before the —— day of ——*] *to C. D. to be by him applied according to the directions of the statute in that case made and provided. Given under our hands the day and year first above mentioned.*

J. P. and J. J. P.

And "in every case of the adjudication of a pecuniary penalty under this Act, and non-payment thereof, the justices, before whom any offender shall have been convicted, may commit such offender to any gaol or house of correction within his jurisdiction, for a term not more than one calendar month, where the sum to be paid shall not exceed five pounds, and in any case not more than two calendar months, the imprisonment to cease on payment of the penalty and the costs for the recovery thereof; or instead of imprisonment, it shall be lawful for the justices, by warrant under their hands and seals, to order such penalty, with the reasonable costs and charges of the conviction, to be levied by distress and sale of the goods and chattels of the offender;" and all such convictions and warrants shall be taken to be within the provisions of stat. 5 G. 4, c. 18, (*post*, pp. 379, 380). *Id. s.* 15.

And "no conviction for any offence against this Act shall be quashed for want of form, or be removed by certiorari or otherwise into any of Her Majesty's superior courts of record; and that no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same; and that where any distress shall be made for levying any money by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto; nor shall the party distraining be deemed a trespasser from the beginning, on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for the special damage (if any) in an action upon the case." *Id. s.* 17.

Appeal.] "In every case of summary conviction before any justices of the peace under this Act, in which the penalty adjudged to be paid shall be more than three pounds, any person who shall think himself aggrieved by the conviction, may appeal to the justices of the peace at the next general or quarter sessions of the peace to be holden for the county, riding, or division wherein the cause of complaint shall have arisen; provided that such person, at the time of the conviction, or within forty-eight hours thereafter, shall enter into a recognizance, with two sufficient sureties, conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices at such sessions assembled, and to pay such costs as shall be by the last-mentioned justices awarded; and it shall be lawful for the justices, by whom such conviction shall have been made, to bind over the witnesses, who shall have been examined, in sufficient recognizances, to

attend and be examined at the hearing of such appeal; and that every such witness, on producing a certificate of his being so bound, under the hand of the justices, shall be allowed compensation for his time, trouble, and expenses in attending the appeal, which compensation shall be paid, in the first instance, by the treasurer of the county or riding, in like manner as in cases of misdemeanor, under the provisions of stat. 7 G. 4, c. 64; and in case the appeal shall be dismissed, and the order of conviction affirmed, the reasonable expenses of all such witnesses attending as aforesaid, to be ascertained by the court, shall be repaid to the treasurer of the county or riding by the appellant." *Id. s.* 19.

Actions against constables, &c.] "For the protection of persons acting in the execution of this Act, be it enacted, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such cause of action shall be given to the defendant one calendar month at the least before the commencement of the action; and in any such action, the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial is had shall certify his approbation of the action, and of the verdict obtained thereupon." *Id. s.* 18.

6. *Special constables.*

In what cases and how appointed.] "In all cases where it shall be made to appear to any two or more justices of the peace of any county, riding, or division, having a separate commission of the peace, or to any two or more justices of any liberty, franchise, city, or town in England or Wales, upon the oath of any credible witness, that any tumult, riot or felony

has taken place, or may be reasonably apprehended, in any parish, township, or place, situate within the division or limits for which the said respective justices usually act, and such justices shall be of opinion that the ordinary officers appointed for preserving the peace are not sufficient for the preservation of the peace, and for the protection of the inhabitants and the security of the property in any such parish, township, or place as aforesaid:" then such justices, or any two or more justices acting for the same division or limits, may nominate and appoint, by precept in writing under their hand, so many as they shall think fit of the householders or other persons (not legally exempt from serving the office of constable, or, by sect. 2, even persons exempt, if upon the representation of two justices one of the principal secretaries of state shall order it,) residing in such parish, township, or place as aforesaid, or in the neighbourhood thereof, [or residing elsewhere, if willing, 5 & 6 *W.* 4, *c.* 43,] to act as special constables, for such time and in such manner as to such justices shall seem fit and necessary for the preservation of the public peace, and for the protection of the inhabitants, and the security of the property in such parish, &c.: Provided that whenever it shall be deemed necessary to nominate and appoint such special constables as aforesaid, notice of such nomination and appointment, and of the circumstances which have rendered the same expedient, shall be forthwith transmitted by the justices making the same, to one of the principal secretaries of state and to the lieutenant of the county. 1 & 2 *W.* 4, *c.* 41, *s.* 1.

Also, any of Her Majesty's principal secretaries of state may give directions to the lieutenant of any county to cause special constables to be appointed and sworn, in manner aforesaid, throughout the whole or any part of such county, for any time not longer than three months, and may signify, if he think fit, that no person shall be excused by reason of any exemption. *Id. s.* 3.

How sworn in, &c.] The following is the form of the oath to be administered: "*I, A. B. do swear that I will well and truly serve our sovereign Lady the Queen, in the office of special constable for the parish* [or *township*] *of* ——, *without favour or affection, malice or ill-will; and that I will, to the best of my power, cause the peace to be kept and preserved, and prevent all offences against the persons and properties of Her Majesty's subjects; and that while I continue to hold the said office, I will, to the best of my skill and knowledge, discharge all the duties thereof faithfully according to law: So help me God.*"

This oath may be administered by the justices who appoint the special constables, or by any one of them, or by any other justice acting for the same division or limits. *Id. s.* 1. But to make the refusal to take the oath punishable, the party must

be required to take it, either by the justices who appoint him, or any two of them, or by any other two justices acting for the same division or limits: and if any person, appointed a special constable, shall refuse to take the oath when so required, he shall forfeit and pay such sum, not exceeding 5*l.*, as to the justices so requiring him shall seem meet; or if any person, appointed a special constable, shall neglect or refuse to appear at the time and place for which he shall be summoned, for the purpose of taking the oath, he shall be liable to be convicted before such two justices, and forfeit and pay a sum not exceeding 5*l.*, unless he prove that he was prevented by sickness or such other unavoidable accident as the justice shall deem a sufficient excuse. *Id. s.* 7.

Conviction for refusing to take the oath:—*Berkshire to wit: Be it remembered, that on ——, at ——, A. B. is convicted before us, E. F. and G. H., two of Her Majesty's justices of the peace for the said county, by whom the said A. B. was appointed special constable as hereinafter mentioned,* for that he the said A. B., on ——, at ——, was duly appointed a special constable for the parish of Y., in the county of B., aforesaid, by us the said E. F. and G. H. and others Her Majesty's justices of the peace as aforesaid; and that the said A. B. now here appearing before us, and being by us now here required to take the oath appointed by the statute in such case made and provided to be administered to persons so appointed special constables as aforesaid, he the said A. B. now here unlawfully refuses to take the said oath; against the form of the statute in such case made and provided: And we do adjudge that the said A. B. shall, for the said offence, forfeit the sum of ——, and shall pay the same immediately* [or *on or before the —— day of—— instant*] *to C. D., being one of the overseers of the poor of the* [*parish*] *of ——, in which the said offence was committed, to be by him applied according to the directions of the statute in that case made and provided. Given under our hands, the day and year first above mentioned.*

Conviction for refusing to attend to take the oath: same as the last form, to the asterisk*: *For that he the said A. B., on ——, at ——, was duly appointed a special constable for the parish of Y., in the county of B. aforesaid, by us the said E. F. and G. H. and others of Her Majesty's justices of the peace as aforesaid, and he the said A. B. was thereupon then and there duly summoned to appear* [here state shortly the substance of the summons]; *but the said A. B., although so summoned as aforesaid did neglect and refuse to appear at the time and place for which he was summoned as aforesaid for the purpose of taking the said oath,* [or if the oath be not mentioned in the summons, say, "*the oath appointed by the statute in such case made and provided, to be administered to persons so appointed special constables as aforesaid*];" *against the form of the statute in such case made and provided,* &c. as in the last form to the end.

Where and how they may act.] Every special constable, appointed under this Act, shall, not only within the parish, township or place, for which he shall have been appointed, but also throughout the entire jurisdiction of the justices so appointing him, have, exercise and enjoy all such powers, authorities, advantages and immunities, and be liable to all such duties and responsibilities, as any constable duly appointed now has within his constablewick, at common law or by statute. *Id. s.* 5.

And if two or more justices of any adjoining county make it appear to the satisfaction of two or more of the justices of the division or limits wherein such special constables are serving, that any extraordinary circumstances exist which render it expedient that the said special constables should act in such adjoining county, then the latter justices may order them to act in such adjoining county, in such manner as such latter justices shall deem meet. *Id. s.* 6.

Orders and regulations.—Service determined.] The justices appointing the special constables, or any two of them,—or the justices of the division or limits within which such constables are called out at a special sessions,—shall have power to make such orders and regulations as may from time to time be "necessary and expedient for rendering such special constables more efficient for the preservation of the public peace," and may also remove such special constables from their office, for any misconduct or neglect of duty. *Id. s.* 4. They may also suspend or determine the services of all or any of the special constables so called out as to them shall seem meet, of which they shall send notice to one of the principal secretaries of state, and to the lieutenant of the county. *Id. s.* 9. And a special constable once appointed, continues to have all the authority of a constable, until his services are actually determined by the justices under this section. *R.* v. *Porter et al.*, 9 *Car.* & *P.* 778. And every such special constable, within one week after the expiration of his office, or after he shall cease to exercise the same, shall deliver up to such person as a justice of the peace shall direct, every staff, weapon and other article, which shall have been provided for such special constable under this Act, under a penalty not exceeding 2*l.*, upon conviction before two justices. *Id. s.* 10. This conviction can readily be framed from the forms, *supra.*

Refusing to serve, or disobeying orders.] If any person appointed a special constable, and being called upon to serve, shall "neglect or refuse to serve as such special constable, or to obey such lawful orders and directions as may be given to him for the performance of the duties of his office:" penalty not exceeding 5*l.* for every such neglect or refusal, on convic-

tion before two justices, unless such person shall prove to the satisfaction of the said justices that he was prevented by sickness or such other unavoidable accident as by the said justices shall be deemed a sufficient excuse. *Id. s.* 8.

Conviction, same as the form, *ante*, p. 351, to the asterisk*: *For that he the said A. B., on ——, at ——, was duly appointed a special constable; and that afterwards, on ——, at ——, [being called upon to serve as such special constable, he the said A. B. did then and there neglect and refuse to serve as such special constable;* or *" being ordered and directed by —— to ——, he the said A. B. did then and there neglect and refuse to obey such order and direction, and did not obey the same;] against the form of the statute in such case made and provided. And we do adjudge,* &c.

Their allowances and expenses.] The justices for the division or limits within which such special constables shall be called out, at a special sessions to be held for the purpose [and which may be adjourned from time to time, *s.* 14,] may order them such " reasonable allowances for their trouble, loss of time and expenses," as to such justices shall seem proper; and may also order payment of expenses incurred in providing such constables with staves and other necessary articles: such orders to be made upon the treasurer of the county, &c. *Id. s.* 13.

Or if it be made to appear to any two or more justices of the county, &c., on the oath of three or more credible witnesses, that the appointment of such special constables has been occasioned " by the behaviour, or by reasonable apprehension of the behaviour, of the persons employed upon any railway, canal or other public work, made or carried on under the authority of parliament, within the district or division for which such justices usually act," the justices, at any time not exceeding one month after such appointment, may make orders from time to time upon the treasurer or other officer who shall have the control or custody of the funds of the company making the railroad, &c., for payment of such reasonable allowances to such special constables, (not exceeding 5*s.* a day each) for their trouble, loss of time and expenses, as to the justices shall seem proper; a copy of which order shall be sent by the justices to one of the principal secretaries of state, and if allowed by him, it shall be binding on the company, &c. 1 & 2 *Vict. c.* 80, *s.* 1. The secretary of state, however, may disallow the order altogether, or in part, in which case the expenses shall be paid or made up out of the rate for the county, &c. *Id. s.* 2. The amount ordered and allowed, two justices may cause to be levied by distress upon the goods and chattels belonging to the company. *Id. s.* 3.

Assaulting or resisting them.] " If any person shall assault

or resist any constable appointed by virtue of this Act, whilst in the execution of his office, or shall promote or encourage any other person to do so;" penalty not exceeding 20*l.*, on conviction before two justices; or he may be indicted. 1 & 2 *W.* 4, *c.* 41, *s.* 11.

Conviction, same as the form *ante*, p. 351, to the asterisk*: *For that he the said A. B., on ——, at ——, did assault and resist one C. D., a special constable duly appointed by virtue of the statute in such case made and provided, while in the execution of his said office of special constable; against the form of the statute in such case made and provided. And we do adjudge*, &c.

Proceedings for penalties.] The prosecution must be commenced within two calendar months after the commission of the offence. *Id. s.* 15. The Act gives a form of conviction (*s.* 17), which is the same as the form *ante*, p. 351. The penalty shall be paid to some one of the overseers of the poor or other officer of the parish, &c., where the offence was committed, to be by him paid over for the use of the rate for the county, &c.; and no inhabitant shall therefore be deemed an incompetent witness in proof of such offence. *Id. s.* 15. The penalty may be ordered to be paid, either immediately, or at such time as the justices shall think fit; and if not paid, it may be levied by distress; and for want of sufficient distress, the offender may be imprisoned, with or without hard labour, in the common gaol, or house of correction for not more than one calendar month where the penalty shall not exceed 5*l.*, and for not more than two calendar months in any other case,—the imprisonment to cease on payment of the sum due. *Id. s.* 16.

No conviction to be deemed void for want of form, or be removed by certiorari, &c. *Id. s.* 18. And no warrant to be deemed void for any defect, if it allege that it is founded on a conviction, and there be a good conviction to warrant it. *Id.*

The Act contains the usual provisions as to notice of action, limitation, venue, plea, tender of amends, costs, &c., in actions, &c. brought against persons acting in execution of this Act. *Id. s.* 19.

Special constables in boroughs.] In October in every year, any two or more justices of the peace of any borough, shall nominate and appoint, by precept in writing under their hands, so many as they shall think fit of the inhabitants of such borough (not legally exempt from serving the office of constable), to act as special constables within such borough, whenever thereunto required by warrant from any justice of the borough, but not otherwise; "and every such warrant shall recite that, in the opinion of the justice granting the same, the

ordinary police force of the borough is insufficient to maintain the peace of the borough." 5 & 6 *W.* 4, *c.* 76, *s.* 83.

The persons thus appointed shall take the oath in stat. 1 & 2 W. 4, c. 41, *ante*, p. 350; they shall have "the powers and immunities, and be liable to the duties and penalties," enacted by that Act; and they shall receive out of the borough fund 3*s.* 6*d.* each, for every day they shall be called out to act. *Id. s.* 83.

CONVICTION.

When an information or complaint is laid before a justice of the peace, of an offence, punishable merely upon a summary conviction, having been committed within the county or other district to which his commission extends, it is his duty to have the offender brought before him, to hear the parties and their witnesses, to determine the matter, and to punish or discharge the defendant, according to the directions of the statute upon the subject. And it may be observed, that justices have no authority whatever to proceed against an offender, by way of summary conviction, except in cases where it is given to them, either expressly or by necessary implication, by some particular statute. As therefore not only the conviction itself, but also the preliminary and subsequent proceedings, namely, the information, the summons or warrant, the proceedings at the hearing, and the warrant of distress or commitment, form material parts of this subject, we shall consider them in the following order:—

1. *The information*, p. 356.
2. *The summons or warrant*, p. 359.
3. *Proceedings at the hearing*, p. 362.
 Before whom, p. 362.
 Appearance or default of the defendant, p. 362.
 Evidence, p. 363.
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 Conviction, p. 364.
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4. *The conviction*, p. 368.
 Recital of the information, p. 368.
 Summons and appearance, &c. p. 369.
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Forms, where the defendant appears and pleads not guilty, p. 374.
——— *where the defendant appears and confesses*, p. 375.
——— *where the defendant does not appear*, p. 375.
5. *The warrant of distress or commitment*, p. 376.
Of commitment, where the punishment is by imprisonment, p. 377.
——— *in default of immediate payment of penalty*, p. 377.
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6. *Convictions, &c., how reviewed*, p. 383.
By appeal, p. 383.
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1. *The Information.*

An information is the first proceeding against an offender punishable upon a summary conviction. In practice, however, where it is not expressly directed to be in writing by the statute creating the offence, it is never required to be drawn up in form, except in cases where the proceedings are at the suit of a common informer for a penalty: in which cases, whether the informer be entitled to the whole of the penalty, or to a moiety of it only, the magistrate always requires an information in writing, drawn up in regular form, to be lodged with him, before he will grant the prosecutor a summons against the offender. In all other cases, the magistrate usually requires no more than a mere verbal statement of the case by the prosecutor, before the summons is granted, or a statement of it upon oath before he grants a warrant. It is not actually necessary, however, that it should be upon oath, unless the statute creating the offence require it. *Basten* v. *Carew*, 3 *B.* & *C.* 649. We shall therefore confine our observations under the present head to informations at the suit of a common informer.

An information at the suit of a common informer must state the offence, with the same certainty and precision as an indictment.

It must state the name of the informer, in order that he may not afterwards be called as a witness.

It must state the time at which the information purports to be lodged, and the time when the offence was committed, in order that it may appear on the face of the information that

the prosecution has been commenced within the time limited for that purpose by law: but it is not essential that this time should be stated truly; if there afterwards appear to be a variance in this respect between the information and the evidence, it will be immaterial, if it appear from the evidence that the prosecution was actually commenced in due time.

It must state the place, namely, the parish and county, &c., within which the offence was committed, in order to show that it was committed within the jurisdiction of the justice before whom the information is preferred; *see R.* v. *Hazel*, 13 *East*, 139; but here also, although the information must state the county or other extent of the jurisdiction of the justice truly, it is not necessary that it should be correct as to the parish or other place where the offence is alleged to have been committed, unless, indeed, it be an information for an offence where the statute creating it gives a part of the penalty to the poor of the parish in which it is committed, in which case a material variance between the parish laid and that proved, would be fatal.

And lastly, it must state all the facts and circumstances which constitute the offence, according to the definition of it in the statute on which the information is framed. It is not sufficient, however, to state the offence generally, in the words of the statute, unless the statute be sufficiently specific in itself; but the particular acts done must be set out, in order that it may be seen whether they amount to an offence within the statute or not. *R.* v. *James*, *Cald.* 458. Thus where the defendant was convicted on the Pilot Act, for having continued in the conduct and charge of a ship after a licensed pilot had offered to take charge of it, in the words of the statute, the conviction was holden bad, because it did not allege that the pilot had offered to him or in his presence, or that he, the defendant, had any knowledge of the offer. *Chaney* v. *Payne*, 1 *Q. B.* 712, 10 *Law J.* 114, *m.* And if the statute, in the definition of the offence, use any adverbs of intent, &c., as "maliciously," "wilfully," "knowingly," "unlawfully," or the like, care must be taken to use the same, in charging the offence in the information, otherwise it will be bad; *see R.* v. *Jukes*, 5 *T. R.* 536; and if the party be imprisoned, or have his goods seized under a conviction upon it, he may bring his action against the justices. *Carpenter* v. *Mason et al.*, 12 *Ad. & El.* 629. Also the information must state all these facts with certainty and precision, with time, place, &c. And it must not state any part of the offence, in the alternative, *R.* v. *Pain*, 5 *B. & C.* 251. *R.* v. *Sadler*, 2 *Chit.* 519. *R.* v. *North*, 6 *D. & R.* 143, unless, indeed, both parts of the alternative be the same in substance, as for instance, charging the defendant with doing an act, *or* causing it to be done. If there be any exception in the same clause of the statute which creates the offence,

or to the constable or other third person. It should state a particular time and place for the party's attendance; and a reasonable time should intervene between the granting of the summons and the time appointed for the party's attendance, in order that he may have an opportunity of collecting his witnesses, and preparing for his defence. *See R.* v. *Mallinson*, 2 *Burr.* 679. Where a statute directed that the summons should be served ten days at least before the time appointed for the hearing, this was holden to mean ten clear days, exclusive of the day of the service and the day of the hearing; and when it appeared upon the face of a conviction upon default of appearance, that there were not ten clear days between the service of the summons and the hearing, the conviction was holden bad. *Mitchell* v. *Foster et al.*, 12 *Ad.* & *El.* 472. One justice may grant it, even in cases where the conviction must be by two or more justices. 3 *Geo.* 4, *c.* 23, *s.* 2. The following is the form of the summons:—

Berkshire, to wit: To the constable of ——.

Whereas A. B. of ——, *in the county aforesaid, labourer, hath this day been charged before me, J. P. one of Her Majesty's justices of the peace for the county aforesaid, on the oath of a credible witness, for that he the said A. B., on* ——, *at* ——, *did*" [&c. here state the offence as in the information, or in the form of conviction in such a case]: "*These are therefore to require you forthwith to summon the said A. B. to appear before me at* ——, *in the said county, on* [*Wednesday*] *next, the* [*third day of July instant*], *at the hour of eleven in the forenoon of the same day, to answer to the said charge, and to be further dealt with according to law: and be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal the* —— *day of* ——, *in the year of our Lord* ——. J. P.

It is usually thus directed to the constable of the district within which the party accused resides or is to be found, for he alone is punishable for not executing it; *See stat.* 5 *Geo.* 4, *c.* 18, *s.* 6: if directed to the party himself, it is in the same form in substance, only in the second person instead of the third.

Where the summons is directed to the constable, or a third person, a copy of it plainly and legibly written on paper, should be served personally upon the party accused; if directed to the party himself, the original should be personally served upon him, and a copy of it kept by the party serving it. If the statute creating the offence, contain no directions as to the time of serving the summons, it should be served a reasonable time before the day appointed for the hearing; but if it contain any such directions, care must be taken to pursue them

strictly. Where the statute required that the summons should be served "ten days at the least," before the time of hearing, and it was served on the 20th September, and the conviction was on the 30th, the defendant not appearing: the court held that the "ten days at the least," meant ten days exclusive of the day of the service and of the day of the hearing, and that therefore on the 30th the magistrates had no jurisdiction to convict; and that having issued a distress warrant upon the conviction, under which the defendant's goods were taken, they were liable to an action of trespass. *Mitchell* v. *Foster*, 9 *Law J.* 95, *m.* It should be personally served upon the party accused, (unless where personal service is expressly dispensed with by statute), otherwise if the party do not attend at the time appointed, it would be imprudent for the justice to proceed to hear the case in his absence. *R.* v. *Hall*, 6 *D.* & *R.* 84. If, however, he appear, his appearance will cure every defect in this respect. *R.* v. *Stone*, 1 *East*, 649. *R.* v. *Johnson*, 1 *Str.* 261.

Warrant.] A justice of peace cannot grant a warrant upon an information, unless expressly authorized to do so by statute. And even in cases where such authority is given, a warrant is seldom granted in the first instance, unless in cases where it is likely that the party will abscond, as soon as he hears that the complaint has been lodged against him. Nor is it usual to grant it after a personal service of the summons; for in that case the justice may proceed to hear and determine the case, whether the party accused appear before him or not. *See R.* v. *Simpson*, 1 *Str.* 44. *Arch. Peel's Acts*, 172, 250. But if the party cannot be personally served with the summons, and there be reason to think that he keeps out of the way in order to avoid a personal service of it, or if, under the peculiar circumstances of any case, a warrant be deemed advisable in order to prevent the party's absconding before the case can be heard, or the like: then, in cases where a warrant may legally be issued, the justice, upon application, and upon the matter of the information or complaint being substantiated before him upon oath, will grant a warrant, requiring the person to whom it is directed to apprehend the party complained of, and bring him before the same or some other justice of the peace, to answer to the charge against him. The following is the form of the warrant:—

Berkshire: To the constable of ——, and all other peace-officers in the said county of Berks.

Forasmuch as A. B., of ——, in the county aforesaid, labourer, hath this day been charged before me, J. P., one of Her Majesty's justices of the peace for the county aforesaid, on the oath of a credible witness, for that he, the said A. B., on ——, at ——, did [&c. here state the offence as in the information, or in the

form of conviction in such a case]; "*These are therefore to command you, in Her Majesty's name, forthwith to apprehend and bring before me, or some other of Her Majesty's justices of the peace in and for the said county, the body of the said A. B. to answer unto the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, the —— day of ——, in the year of our Lord ——.*

J. P.

It is not made returnable at any particular time; but remains in force until executed. *Dickenson* v. *Browne, Peake*, 234.

3. *Proceedings at the Hearing.*

Before whom.] In some cases the statute creating the offence allows the conviction to be by one justice; in other cases, it requires it to be made by two; in others, (as in Sir R. Peel's Acts, for instance,) although the conviction may be by one justice, yet if it be before two or more, an additional punishment, such as whipping or the like, may be adjudged to the defendant. This subject, however, is entirely regulated by the statute, which gives cognizance of the offence to justices of peace, in each particular case; and to which the reader is referred. If the statute allow one justice to convict, the conviction may be by two or more; but where the statute requires the conviction to be by two justices, a conviction by one would be *coram non judice*, and void, and the justice making the conviction, and the constable executing it, would be liable to an action of trespass, if the party's goods were distained upon, or himself committed.

It may be necessary to mention that the room or place in which the magistrate sits, to hear and determine a matter of complaint thus in a summary way, is in law a public and open court, to which the public generally may have access. And the party accused shall be admitted to make his full answer and defence, and to have all witnesses examined and cross-examined, by counsel or attorney. 6 & 7 W. 4, c. 114, s. 2.

Appearance or default of defendant.] Upon the accused party's appearing before the justice, either in obedience to the summons, or upon being apprehended and brought there under a warrant; or where, after personal service of the summons, the party does not attend at the time and place appointed by it, and oath is duly made of the service:—the justice then proceeds to the hearing of the case.

The information (if one have been drawn up in form) is first read to the defendant; or if no information have been drawn up, then the charge is read to him from the summons or warrant; and he is asked what he has to say to the charge

thus made against him. If he confess that he committed the offence, nothing remains for the justice to do, but to convict the defendant, and award the punishment assigned by the statute creating the offence. And a minute should be taken of this, in order that a conviction in form may be drawn up from it afterwards and returned to the sessions. But if he say that he is not guilty, or say nothing, or refuse to enter upon any defence; *See R.* v. *Crowther*, 1 *T. R.* 127. *R.* v. *Benwell*, 6 *T. R.* 75; or, if he do not appear at all, but make default; then the justice must proceed to examine the witnesses, and adjudge of the guilt or innocence of the accused party accordingly.

By appearing, the party waives all objections to the summons, or for want of one. *R.* v. *Johnson*, 1 *Str.* 261. *R.* v. *Stone*, 1 *East*, 649.

Evidence.] The evidence must prove the offence with which the defendant is charged; the time when it was committed, in order to show that the information or complaint was lodged within the time limited for that purpose by statute, *see R.* v. *Woodcock*, 7 *East*, 146, and in the case of an information by a common informer, that the offence was committed before the information was lodged; *see R.* v. *Fuller*, 1 *Ld. Raym.* 509; the place where it was committed, in order to show that it was committed within the limits of the justice's jurisdiction; *see R.* v. *Jefferies*, 1 *T. R.* 241. *R.* v. *Edwards*, 1 *East*, 276. *R.* v. *Hazell*, 13 *East*, 139; and every fact and circumstance necessarily constituting the offence; for if any one of these be not proved, or cannot fairly be presumed from other facts or circumstances which have been proved, the defendant should not be convicted. But where a statute, in the same clause creating the offence, contains some exception or proviso which must be negatived by the information:—although the information in such a case, would be bad, if it did not negative such exception, (*see ante*, p. 357), yet it is not necessary for the prosecutor to prove the negative, (*R.* v. *Turner*, 5 *M.* & *S.* 206), but the defendant may prove the affirmative, if he will, in his defence.

It may be necessary to mention, that in the case of summary convictions, justices of peace have no authority to summon a witness, or to punish him for non-attendance, unless (as is frequently the case) such power be given to him by the statute creating the offence. The witnesses who attend, are called and examined: first, the witnesses for the prosecution, and (if the defendant appear) then the witnesses for the defence. And each witness, after his examination in chief, may be cross-examined by the opposite party, or by some professional person on his behalf. *See stat.* 6 & 7 *W.* 4, *c.* 114, *s.* 2, *ante*, p. 362, *and Cox* v. *Coleridge*, 1 *B.* & *C.* 37. And therefore it is that where the defendant appears, each witness must be sworn and

examined in his presence, that he may have an opportunity of cross-examination. *R.* v. *Crowther*, 1 *T. R.* 127. A minute should be carefully taken of the testimony of each witness, both in his examination in chief, and in his cross-examination, and as nearly as possible in the words the witness uses; in order that it may be inserted in the conviction, if necessary, when a conviction is afterwards drawn up in form, to be transmitted to the sessions.

The informer, if he be entitled to any part of the penalty, cannot be a witness against the defendant. *R.* v. *Tilly*, 1 *Str.* 115. *See* 1 *Phil. Ev.* 117, unless made so by the statute creating the offence, either expressly or by necessary implication. And where the informer cannot be a witness, his wife is incompetent also. *See* 12 *East*, 250. Formerly also a rated inhabitant of a parish was incompetent as a witness for the informer, if any part of the penalty were to go to the poor of the parish in which he was rated; but now, by stat. 27 Geo. 3, c. 29, where pecuniary penalties or parts thereof are given to the poor, the inhabitant of any place shall be a competent witness to prove the offence, although the place may be benefited by the conviction of the offender, provided the penalty do not exceed 20*l.*; or even when the penalty exceeds that amount. *See* 6 & 7 *Vict. c.* 85, *s.* 1, *and post. tit.* "*Evidence.*" Husband and wife, however, cannot be witnesses against each other, in any case of summary conviction before a magistrate, except the case of an assault and battery.

Adjournment.] If either party, but particularly the defendant, show a reasonable ground for adjourning the hearing to some other day, the justice may do so, if he will: and in such a case, the hearing at such subsequent day will proceed at the stage at which it was broken off at the time of the adjournment.

Conviction.] In summary convictions before a justice of peace, he is substituted for a jury, as far as relates to the conviction, that is, to the finding of the party guilty or not guilty. He should judge, therefore, of the guilt or innocence of the defendant, from the evidence, in the same manner as if he were upon a jury; if the evidence be such as to leave no reasonable doubt upon his mind of the guilt of the defendant, he should convict him; if otherwise, he should acquit him.

Adjudication.] The adjudication is analogous to the judgment in a court of law. In some cases the statute is peremptory as to the punishment, giving no discretion to the justice to alter or vary it; and in such case the justice of course can only pursue the directions of the statute. In other cases the punishment is left in some measure in the discretion of the jus-

tice, as to the nature of the punishment, its duration, or extent: in such cases he should guide his discretion as to the nature of the punishment, according to the circumstances of the case and the condition in life of the defendant; and as to the extent of the punishment, according to the circumstances of aggravation or extenuation, under which the offence is proved to have been committed. If any part of this adjudication, when drawn up, be bad, the conviction will be deemed bad altogether, and may be quashed. *R.* v. *Petchett*, 5 *East*, 339.

Costs.] The statute creating the offence usually gives authority to the justices to award costs to the party in whose favour they decide. Where the statute, however, contains no provision of that description, it is provided by stat. 18 Geo. 3, c. 19, s. 1, that where any complaint shall be made before any of his Majesty's justices of the peace, [in a matter of which he has jurisdiction, *George* v. *Chambers et al.*, 12 *Law J.* 94, *m*,] and any warrant or summons shall issue in consequence of such complaint, it shall and may be lawful to and for any justice of the peace who shall have heard and determined the matter of the said complaint, to award such costs to be paid by either of the parties, and in manner and form as to him or them shall seem fit, to the party injured: and in case any person, so ordered by the said justice to pay such sums of money as aforesaid, shall not forthwith pay down or give security for the same to the satisfaction of the justice, it shall and may be lawful for the said justice, by warrant under his hand and seal, to levy the said sum or sums by distress and sale of the goods and chattels of such person so refusing or neglecting; and, where goods and chattels of such person cannot be found, to commit such person to the house of correction of the county, &c. wherein such person shall reside, there to be kept to hard labour for any time not exceeding one month, nor less than ten days, or until such sum or sums of money, together with the expenses attending the commitment of such person to such house of correction, be first paid.

Provided nevertheless, that upon the conviction of any person or persons upon any penal statute, where the penalty shall amount to or exceed the sum of 5*l.* the said costs shall be deducted by the said justice, according to his discretion, out of the said penalty, so that the said deduction shall not exceed one-fifth part of the said penalty; and the remainder of the said penalty shall be paid to or divided among the person or persons, who would have been entitled to the whole of the penalty, in case this Act had not been made. *Sect.* 2.

And, by sect. 3, it is further enacted, that the several forms to this Act annexed, shall and may, in the respective cases, be used and observed. The following are the forms referred to: 1st, a form of awarding costs:—

County or *Borough* } *I, J. P., one of Her Majesty's justices*
of ——, to wit: } *of the peace in and for the —— aforesaid, in pursuance of an Act made in the eighteenth year of his Majesty King George the Third, intituled, "An Act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions, for the payment of the charges of constables in certain cases, and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony," on the complaint of ——,* [here state the names of the parties, and the offence generally and the date,] *against ——, for ——, which said complaint was heard and determined by* [*me*], *on the —— day of —— instant: do award the following costs to be paid by ——, videlicet,* [here state the costs.] *Given under my hand and seal, this —— day of ——, in the year of our Lord ——.* J. P.

2dly.—Form of Warrant of Distress and sale for the same.

——, to wit: To the constable of ——, and to all other Her Majesty's constables in and for ——, in the —— aforesaid.

Whereas [*I, J. P., one*] *of Her Majesty's justices of the peace in and for the —— aforesaid, in pursuance of an Act made in the eighteenth year of his Majesty King George the Third, intituled "An Act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions, for the payment of the charges of constables in certain cases, and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony," have awarded on the —— day of —— now last past, on the complaint of —— against ——, for ——, the following costs to be paid by ——, videlicet:* [here state the sum] ; *"and whereas the said ——, being ordered by* [*me*] *the said justice to pay such sum as aforesaid, hath not paid down, or given security for the same to the satisfaction of* [*me*] *the said justice: These are therefore to command you, and each and every of you, to levy the said sum of ——, by distress and sale of the goods and chattels of the said ——, and I do hereby order and direct the goods and chattels so to be distrained, to be sold and disposed of within —— days, unless the said sum of ——, for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby also commanded to certify unto* [*me*] *what you shall have done by virtue of this* [*my*] *warrant. Given under* [*my*] *hand and seal, at ——, the —— day of ——, in the year of our Lord ——.* J. P.

3dly.—The Constable's Return thereon, for want of Distress.

—— to wit: I, E. F., constable of ——, do hereby certify to

[J. P., esquire], justice of the peace of —— aforesaid, that I have made diligent search for, but do not know nor can find any goods and chattels of ——, by distress and sale wherof I may levy the sum of ——, pursuant to [his] warrant for that purpose, dated the —— day of ——. Given under my hand, this —— day of ——, in the year our Lord ——. E. F.

4thly.—Commitment thereupon to the House of Correction.

——, to wit: To the constable of ——, and also to the keeper of the house of correction, at ——.

Whereas, in pursuance of an Act made in the eighteenth year of His Majesty King George the Third, intituled, "An Act for the payment of costs to parties, on complaints determined before justices of the peace out of sessions, for the payment of the charges of constables in certain cases, and for the more effectual payment of charges to witnesses and prosecutors of any larceny or other felony," [I, J. P., one] of Her Majesty's justices of the peace in and for the said —— did issue [my] warrant of distress and sale, directed to —— of ——, constable of the said ——, ordering the said constable to levy the said sum of ——, of the goods and chattels of the said ——, in manner and form as therein is mentioned: And whereas it appears to [me] by the return of [E. F.] constable of ——, dated the —— day of ——, that he hath made diligent search, but doth not know of, nor can find any goods or chattels of the said ——, by distress and sale whereof the said sum of —— may be levied, pursuant to the said warrant: These are therefore to command you the said constable of —— to apprehend the said ——, and convey the said —— to the said house of correction at ——, and to deliver the said —— there to the said keeper of the said house of correction; and these are also to command you the said keeper of the said house of correction to receive the said —— into the said house of correction, and there to keep him to hard labour for the space of ——, from the date hereof, or until such sum of ——, together with the expenses attending the commitment of the said —— to the said house of correction, be first paid, or until the said —— be discharged by due course of law. Given under [my] hand and seal, at ——, the —— day of ——. J. P.

If costs be not given by the statute creating the offence, and can therefore be awarded by virtue of this statute alone, then I conceive they cannot form any part of the conviction, but must be awarded and recovered in the manner above specified: because the third section of the Act is peremptory, that the above forms shall be used and observed. But if costs be given by the statute creating the offence, they may in that case be awarded in the conviction. *Vide post.*

4. *The Conviction.*

A conviction is the record of a summary proceeding before a magistrate, drawn up in form. It should perhaps in all cases be written upon parchment; and in practice, it usually is so, particularly when returned to a *certiorari*. Where a form is given by the statute which creates the offence, it is usually very short, seldom stating more than the conviction and adjudication, and usually leaving a blank for the statement of the offence, which blank must be filled up with as much certainty as in an ordinary conviction or information. *See Chaney* v. *Payne*, *ante*, p. 357. If in such a case any form not warranted by the statute be adopted, the conviction will be illegal and void; *Danson* v. *Gill*, 1 *East*, 64. *Goss* v. *Jackson*, 3 *Esp.* 198; but if it contain all that is in the statute, and something more, the superfluous matter shall not vitiate it. *R.* v. *Jefferies*, 4 *T. R.* 767. And a trifling variance, in setting out the title of the Act, such as the omission of "part" in setting out the title of the Vagrant Act, in a conviction upon it, will not vitiate the conviction. *Nixon* v. *Nunney*, 1 *Q. B.* 747.

In all other cases, where the statute creating the offence does not give a form, the conviction first recites the information; it then states that the defendant, being summoned, appeared and pleaded, or confessed, or failed to appear, as the case may be: it then states the evidence given on both sides; then it states the conviction, and lastly the adjudication. We shall examine these several parts of a conviction, a little more particularly.

Information.] The conviction recites the information, but in the past tense, *R.* v. *Hall*, 1 *T. R.* 320, to the words "contrary to the form of the statute in such case made and provided." In convictions on informations by a common informer, the information must be set out exactly as it is drawn, and ought not to be altered or varied from in the slightest degree, except merely that it must be recited in the past, and not in the present, tense. But in all other cases of convictions, this part of them, usually, in practice, states the offence, not perhaps exactly as it was described in the summons or warrant, but as it was proved by the evidence before the magistrate.

All objections that can be taken to an information (*see ante*, p. 357, 358), and which are not merely for a defect in form, may be taken also to this part of the conviction. Where a conviction on the excise laws, instead of stating the names of the defendants, stated merely the name of their firm, H. & Co., it was holden that it could not be supported. *R.* v. *Harrison*, 3 *T. R.* 508.

Summons and appearance, &c.] The conviction usually states that the defendant was summoned; and it must do so, in cases where the defendant did not actually appear at the hearing, or where it is not shown on the face of the conviction, that he was present at the time of the proceeding before the justice, otherwise the conviction may be quashed. *R.* v. *Allington*, 2 *Str.* 678. *R.* v. *Venables*, 2 *Str.* 630. *And see R.* v. *Stone*, 1 *East*, 649. *R.* v. *Johnson*, 1 *Str.* 261. And where a statute required the party to be summoned ten days at least before the day of hearing, and it appeared on the face of the conviction that he was summoned on the 20th to appear on the 30th, and in default of his appearance on the 30th the justices adjudicated: the court held the conviction to be void, and the justices liable to an action for an arrest under it. *Mitchell* v. *Foster et al.*, 12 *Ad.* & *El.* 472.

The conviction also states, whether the party accused appeared before the justice or not. If he did not appear, the conviction states the default, then states the evidence against the defendant, and then the conviction and adjudication, in the same manner as if the defendant had appeared and pleaded not guilty. *R.* v. *Simpson*, 1 *Str.* 44. If the defendant appear, his appearance is stated in the conviction, and it is stated also whether (having heard the charge contained in the information,) he pleaded not guilty, or neglected or refused to make any defence: in either of which cases, the conviction states the evidence, and then proceeds to the conviction and adjudication. But if the defendant appear, and confess that he is guilty of the offence imputed to him, the appearance and confession are recorded in the conviction; and then, if it be a confession of the entire offence, instead of stating any evidence, which of course would be unnecessary in such a case, the justice may at once proceed to the conviction and adjudication; but if it be a confession merely of a fact, which forms but a part of the offence charged, the conviction then, after stating the confession in the words of the defendant, proceeds to state the evidence as to the other facts and circumstances constituting the offence charged, and lastly states the conviction and adjudication. *See R.* v. *Gage*, 1 *Str.* 546. *R.* v. *Hall*, 1 *T. R.* 320. *R.* v. *Little*, 1 *Burr.* 613. *R.* v. *Smith*, 3 *Burr.* 1475.

Evidence.] The conviction must set out the evidence in all cases, except where the defendant confesses that he is guilty of the offence charged against him. This is done, in order that the court of Queen's Bench, if the conviction be removed there by *certiorari*, may see, upon the face of it, whether the evidence be sufficient to warrant it or not. *R.* v. *Killett*, 4 *Burr.* 2063. *R.* v. *Read*, 2 *Doug.* 486. *R.* v. *Clarke*, 4 *T. R.* 220. Therefore, stating merely the result of the evidence, and not the evidence itself, *R.* v. *Lovett*, 7 *T. R.* 152, as for in-

stance, stating that the offence was "fully and duly proved," or that the witness swore that the defendant was "guilty of the premises," *R.* v. *Theed*, 2 *Str.* 919, *R.* v. *Baker*, 1 *Str.* 316, or the like, would be bad. Care must be taken, also, to set out the evidence correctly; *See R.* v. *Pearce*, 9 *East*, 358. *Re Rix*, 4 *D.* & *R.* 352. *R.* v. *Warnford*, 5 *D.* & *R.* 489; and if the defendant appeared, it must be alleged to have been given in his presence. *R.* v. *Benwell*, 6 *T. R.* 75. *R.* v. *Vipont*, 2 *Burr.* 1163. *See R.* v. *Kempson*, *Cowp.* 241. *R.* v. *Thompson* 2 *T. R.* 18.

If the conviction be removed into the court of Queen's Bench, and there appear to have been no evidence to prove a material part of the offence charged, that court will quash the conviction. *R.* v. *Smith*, 8 *T. R.* 588. But if, on the other hand, it appear that the justices have acquitted the defendant, upon evidence apparently sufficient to convict him, the court of Queen's Bench will not interfere; *R.* v. *Reason*, 6 *T. R.* 375; for the defendant may possibly have been acquitted, because the witnesses were not credited by the magistrate.

Conviction.] This part of the record is analogous to the verdict of a jury, and merely declares that the party accused is guilty of the offence or offences imputed to him. If the information be for two or more offences, and the justice find him guilty of all, the conviction must state him to be guilty of the "offences" charged upon him in the information; if, on the other hand, the justice find him guilty of one of the offences only, the conviction should state that offence specially, thus: "*that he the said E. F. is guilty of the offence firstly above charged upon him in the said information, for that he the said E. F., on* ——, *at* ——, *did*," &c. stating the offence as in the information; if the conviction in such a case were to state that the defendant was guilty of the "offence" charged, &c., it would be quashed, because it would be uncertain of which of the offences he was guilty. *R.* v. *Solomons*, 1 *T. R.* 249.

But if the justice should be of opinion that the evidence is not sufficient to convict the defendant, he must acquit him; and in such a case the defendant, in strictness, is entitled to have his acquittal recorded, and transmitted to the sessions, in order that he may be enabled to give it in evidence as a bar to any other subsequent information for the same offence. The record in that case may be the same as the record of a conviction, to the end of the evidence, and then thus: *Therefore, it manifestly appearing unto me that he the said E. F. is not guilty of the offence charged upon him in the said information, I do hereby acquit him of the offence aforesaid, and do adjudge that he do go thereof quit without delay. Given under my hand and seal this —— day of ——, in the year of our Lord ——.*" See *ante*, p. 365, as to costs.

Adjudication, &c.] The adjudication is the judgment passed upon the defendant for his offence; and it must form a part of every conviction, otherwise the conviction may be quashed. *See R.* v. *Hawkes*, 2 *Str.* 858. *R.* v. *Vipont*, 2 *Burr.* 1163. *R.* v. *Harris*, 7 *T. R.* 238. Care must be taken also that it be such an adjudication as is warranted by the statute creating the offence; otherwise it will be fatal, and the court, upon application, will quash the conviction. *See R.* v. *Hall*, *Comp.* 60. *R.* v. *Elwall*, 2 *Ld. Raym.* 1514. And if two persons be convicted of an offence punishable with a penalty, each must be severally fined. *Morgan* v. *Brown*, 6 *Nev. & M.* 57. As to costs, *see ante*, p. 365.

In adjudicating the costs, the amount must be mentioned. *R.* v. *Payne*, 4 *D. & R.* 72. The manner in which the penalty was to be distributed must formerly have been specified; *R.* v. *Dimpsey*, 2 *T. R.* 96. *R.* v. *Seale*, 5 *East*, 568; but it is now sufficient to order it to be distributed according to the form of the statute in that case made and provided. *See post*, p. 373. It is not necessary, however, to adjudge that if the penalty be not forthwith paid, the defendant shall be committed; but if it be not in fact paid, the justice may commit him without any such adjudication; and this even after the conviction has been confirmed upon appeal. *R.* v. *Helps*, 3 *M. & S.* 331.

The conviction must be dated. A mistake in the date, however, will not vitiate a conviction, which is otherwise complete. *R.* v. *Picton*, 2 *East*, 195.

Conviction to be returned to the sessions.] The conviction must in all cases be drawn up in form, and returned to the sessions, whether appealed against or not. *R.* v. *Eaton*, 2 *T. R.* 285. In cases of convictions under Peel's Acts, for larceny or malicious injuries to property, it is enacted, that every justice of the peace, before whom any person shall be convicted of any offence against these Acts, shall transmit the conviction to the next court of general or quarter sessions, which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the court. 7 & 8 *Geo.* 4, *c.* 29, *s.* 74. 7 & 8 *Geo.* 4, *c.* 30, *s.* 40. The conviction thus returned, however, may be in a more formal shape than it was when at first drawn. *R.* v. *Barker*, 1 *East*, 186. *Gray* v. *Cookson and Clayton per Ld. Ellenborough, C. J.*, 16 *East*, 21. But although a magistrate may thus draw up a conviction in a more formal manner than was done in the first instance, and may return the amended form as his conviction to the sessions, or to the court of Queen's Bench upon a certiorari, or probably he may return an amended conviction to the sessions even after having before returned an erroneous one, *Selwood* v. *Mount*, 9 *Car.*

& *P.* 75, yet he cannot do this after the first conviction has been quashed, either upon appeal or by the court of Queen's Bench, or after the defendant has been discharged by the court of Queen's Bench by reason of a bad conviction being recited in the warrant of commitment. *Chaney* v. *Payne*, 1 *Q. B.* 712. 10 *Law J.* 114, *m.*

If the defendant demand a copy of the conviction, the justice should give it to him. *R.* v. *Midlam*, 3 *Burr.* 1720. But as the defendant will not be allowed to object that the conviction afterwards returned to the sessions is in another and more correct form than that of which the copy has been given to him, as just now mentioned, *R.* v. *Barker*, 1 *East*, 185. *And see R.* v. *Allen*, 15 *East*, 332, it may be imprudent to depend much upon the copy thus obtained, or to appeal against the conviction, or remove it by *certiorari*, for any formal defect appearing in such copy, because the same defects may probably not appear in the conviction transmitted to the sessions.

Form of conviction.] The form of conviction usually adopted formerly was not very correct; it frequently led to litigation, and often defeated the ends of justice. To remedy this, in some measure, the legislature latterly, in statutes creating offences punishable upon summary conviction, have usually given a form of conviction in each particular case. *See ante*, p. 368. But a general form, sanctioned by statute, for all such offences generally, was still wanted; and therefore, by stat. 3 Geo. 4, c. 23, s. 1, (reciting that great inconveniences often arise in summary proceedings before justices of the peace, deputy-lieutenants and others, from the want of a general form of conviction,) it is enacted, that in all cases wherein a conviction shall have taken place, and no particular form for the record thereof hath been directed, the justice or justices, deputy-lieutenant or deputy-lieutenants, or other person or persons duly authorized to proceed summarily therein, and before whom the offender or offenders shall have been convicted, shall and may cause the record of such conviction to be drawn up in the manner and form following, or in any words to the same effect, *mutatis mutandis*, that is to say:—

County [or as the case may be] *of* ——. } *Be it remembered, that on the* —— *day of* ——, *in the year of our Lord* ——, *at* ——, *in the county of* ——, *A. B. of* ——, *in the county of* ——, *labourer*, [or as the case may be,] *personally came before me*, [or, *before us, &c.*] *C. D., one* [or more, as the case may be,] *of Her Majesty's justices of the peace for the said* ——, *and informed me* [or *us, &c.*] *that E. F., of* ——, *in the county of* ——, *on the* —— *day of* ——, *at* ——, *in the said* ——, *did* [here set forth the fact for which the information is

laid] ; *contrary to the form of the statute in such case made and provided ; whereupon the said E. F., after being duly summoned to answer the said charge, appeared before me,* [or *us, &c.*] *on the —— day of ——, at ——, in the said ——, and having heard the charge contained in the said information, declared he was not guilty of the said offence,* [or as the case may happen to be,] *did not appear before me,* [or *us, &c.*] *pursuant to the said summons,* [or, *did neglect and refuse to make any defence against the said charge*] ; *whereupon I* [or *we, &c.*, or, *nevertheless, I*, or, *we, &c.*] *the said justice or justices, did proceed to examine into the truth of the charge contained in the said information, and on the —— day of —— aforesaid, at the parish of —— aforesaid, one credible witness, to wit, A. W., of ——, in the county of ——, upon his oath deposeth and saith* [if E. F. be present say, *in the presence of the said E. F.,*] *that within —— months* [or as the case may be,] *next before the said information was made before me* [or, *us, &c.*] *the said justice by the said A. B., to wit, on the —— day of ——, in the year ——, the said E. F., at ——, in the said county of ——,* [here state the evidence, and as nearly as possible in the words used by the witness, and if more than one witness be examined, state the evidence given by each,] [or if the defendant confess, instead of stating the evidence, say, *and the said E. F. acknowledged, and voluntarily confessed the same to be true*] ; *therefore it manifestly appearing to me* [or, *us, &c.*] *that he the said E. F. is guilty of the offence charged upon him in the said information, I* [or, *we, &c.*] *do hereby convict him of the offence aforesaid, and do declare and adjudge that he the said E. F. hath forfeited the sum of ——, of lawful money of Great Britain, for the offence aforesaid, to be distributed* [or, *paid*, as the case may be,] *according to the form of the statute in that case made and provided. Given under my hand* [or, *our hands, &c.*] *and seal, the —— day of ——, in the year of our Lord ——.*

And by the same statute, sect. 2, where the original complaint or information shall be made to any justice or justices of the peace, deputy-lieutenant or deputy-lieutenants, or other person or persons different from him or them before whom the same shall be heard and determined, the form of conviction shall be made conformable and according to the fact.

As this precedent is applicable to cases under different circumstances,—to cases where the defendant appears, and where he does not, where he pleads guilty, where he pleads not guilty, and where he refuses to make any defence at all,—and it may therefore perhaps appear a little complicated ; and as convictions should be drawn up with great care and attention, and with the greatest possible correctness, it may be useful perhaps to give here the forms of conviction, according

to the above precedent, which should be adopted in the following instances:—

1. *Where the defendant appears and pleads not guilty, or refuses to make a defence.*
2. *Where the defendant appears and confesses.*
3. *Where the defendant does not appear.*

1. Conviction, where the defendant appears and pleads Not Guilty, or refuses to make a defence.

County [or as the case may be] *of* ——. } *Be it remembered, that on the* —— *day of* ——, *in the year of our Lord* ——, *at* ——, *in the* [*county*] *of* ——, *A. B. of* ——, *in the county aforesaid, labourer, personally came before me, J. P., one of Her Majesty's justices of the peace for the said county, and informed me that C. D. of* ——, *in the county of* ——, *on the* —— *day of* ——, *in the year aforesaid, at* —— *in the said* ——, *did* [here set forth the fact for which the information is laid]; "*contrary to the form of the statute in such case made and provided: Whereupon the said C. D., after being duly summoned to answer the said charge, appeared before me on the* —— *day of* ——, *instant, at* ——, *in the said* ——; *and having heard the charge contained in the said information,* [*declared he was not guilty of the said offence,*" or, "*did neglect and refuse to make any defence against the said charge*]: *Whereupon I the said justice did proceed to examine into the truth of the charge contained in the said information; and on the* —— *day of* —— *aforesaid, at* —— *aforesaid, one credible witness, to wit, E. F., of* ——, *in the county of* ——, *upon his oath deposeth and saith, in the presence of the said C. D., that,*" [here state the evidence and as nearly as possible in the words used by the witness; and if more than one witness be examined, state the evidence given by each thus:] "*And one other credible witness, to wit, G. H. of* ——, *in the county of* ——, *upon his oath deposeth and saith, in the presence of the said C. D., that,*" [&c., stating his evidence]; "*And also a witness, produced and examined on the part of the said C. D., to wit, I. K. of* ——, *in the county of* ——, *upon his oath deposeth and saith, that,*" [&c., stating his evidence]: "*Therefore, it manifestly appearing to me that he the said C. D. is guilty of the offence charged upon him in the said information, I do hereby convict him of the offence aforesaid, and do declare and adjudge* that he the said C. D. hath forfeited the sum of* ——, *of lawful money of Great Britain, for the offence aforesaid, to be distributed*" [or, "*paid,*" as the case may be] "*according to the form of the statute in that case made and provided;* [*and also that the said C. D.*

shall forthwith pay unto the said A. B. the further sum of ——, for his costs and charges, by him the said A. B. about the prosecution in this behalf expended." See *ante*, p. 367.] *Given under my hand and seal, the —— day of ——, in the year of our Lord ——.*

* Or if imprisonment and hard labour be the punishment assigned by the statute, then the adjudication may be thus: *"do declare and adjudge that the said A.B., for his said offence, be imprisoned in the ——, [there to be kept to hard labour] for the space of —— calendar months. Given under my hand and seal, the —— day of ——, in the year of our Lord ——."* Care must be taken that this part of the conviction correspond strictly with the statute upon which the conviction is framed.

2. Conviction where the defendant appears and confesses.

County [or as the case may be] *of ——.* } *Be it remembered, that on the —— day of ——, in the year of our Lord ——, at ——, in the county of ——, A. B. of ——, in the county aforesaid, labourer, personally came before me, J. P., one of Her Majesty's justices of the peace for the said county, and informed me that C. D., of ——, in the county of ——, on the —— day of ——, in the year aforesaid, at —— in the said county, did* [here set forth the fact for which the information is laid]; *contrary to the form of the statute in such case made and provided: Whereupon the said C. D. after being duly summoned to answer the said charge, appeared before me on the —— day of —— instant, at ——, in the said county, and having heard the charge contained in the said information, acknowledged and voluntarily confessed the same to be true: Therefore it manifestly appearing,"* &c. as in the last form to the end.

3. Conviction where the defendant does not appear.

County [or as the case may be] *of ——.* } *Be it remembered that on the —— day of ——, in the year of our Lord ——, at ——, in the county of ——, A. B. of ——, in the county of ——, labourer, personally came before me, J. P., one of Her Majesty's justices of the peace for the said county, and informed me that C. D. of ——, in the county aforesaid, on the —— day of ——, in the year aforesaid, at ——, in the said county did* [here set forth the fact for which the information is laid;] *"contrary to the form of the statute in such case made and provided: Whereupon the said C. D., after being duly summoned to answer the said charge, did not appear before me pursuant to the said summons: Nevertheless, I the said justice,*

did proceed to examine into the truth of the charge contained in the said information; and on the —— day of —— aforesaid, at —— aforesaid, one credible witness, to wit, E. F. of —— in the county of ——, upon his oath deposeth and saith, that" [here state the evidence, and as nearly as possible in the words used by the witness; and if more than one witness be examined, state the evidence given by each, thus]: "***And one other credible witness, to wit, G. H. of ——, in the county of ——, upon his oath deposeth and saith, that"*** [stating his evidence]: "***Therefore it manifestly appearing,***" &c. as in the last form but one to the end.

5. *Warrant of Distress or Commitment.*

If the defendant be convicted, the conviction must next be executed, that is to say, the defendant must be compelled to pay the penalty, or undergo the punishment inflicted by law for the offence, and awarded by the conviction. This is either a corporal punishment, by imprisonment, &c., or a pecuniary penalty, and in default of immediate payment, imprisonment, &c.; or a pecuniary penalty, and, in default of payment within a limited time, imprisonment, &c.; or a pecuniary penalty, and in default of the same being realised by warrant of distress and sale, imprisonment, &c. In this respect, the execution must be in exact conformity with the statute creating the offence. It may be necessary, perhaps, to mention, that a warrant of distress or commitment may, in all cases, be granted by one justice, even in cases where the conviction must be by two; and it is immaterial whether the justice who grants the warrant be one of the justices before whom the party was convicted or not. 3 *G.* 4, *c.* 23, *s.* 2. But it must in all cases show before what justice the defendant was convicted, *R.* v. *York*, 5 *Burr.* 2684, and the place where the offence was committed, or such other circumstances as may be necessary to show that the magistrate had jurisdiction. *Johnson* v. *Reid*, 6 *Mees.* & *Wel.* 124. *Re Peerless*, 1 *Q. B.* 143. It must also recite the conviction on which it is founded, in order to show that the justice had jurisdiction to grant it. *See Lock* v. *Selwood*, 1 *Q. B.* 736. *R.* v. *King*, 13 *Law J.* 43, *m.* 1 *D.* & *Lo.* 721, and the court will not presume a conviction to be good, which, according to the recital in the commitment, appears to be otherwise. *R.* v. *King*, *supra*.

The warrant must in all cases be in writing, and any imprisonment of the party convicted, without a written warrant, except during the period necessary to prepare it, would be illegal. *Hutchinson* v. *Lowndes*, 4 *B.* & *Ad.* 118. And in such a case, the irregularity was holden not to be cured by drawing up a commitment on a subsequent day, dated as of the day of

the imprisonment. *Id.* It must also be dated, if it be a warrant of commitment for a time certain. *Re Fletcher*, 13 *Law J.* 16, *m.* 1 *D. & Lo.* 726.

As to the execution of the warrant, *see ante*, p. 127.

The following are general forms of warrants upon convictions, in the several classes above-mentioned. But as the statutes on the subject of summary convictions vary in this respect in many minute particulars, care must be taken in adopting any of these general forms, to introduce such alterations as may be required by the terms of the statute upon which the conviction is framed. Care must also be taken that the warrant correspond in every material particular with the conviction. *See Rogers* v. *Jones*, 3 *B. & C.* 409. *Daniel* v. *Phillips*, 5 *Tyr.* 293.

I. Commitment where the punishment is by imprisonment, &c.

Berkshire: To the constable of ——, in the said county, and to the keeper of the house of correction at ——, in the said county.

Whereas C. D., late of ——, in the said county, labourer, was on this day duly convicted before me, J. P., one of Her Majesty's justices of the peace for the said county, for that he the said C. D." [&c. stating the offence as in the conviction,] "*against the form of the statute in that case made and provided: and I the said J. P. thereupon adjudged the said C. D. for his said offence, to be imprisoned in the house of correction, at ——, in the said county* [*and there kept to hard labour*] *for the space of —— calendar months: These are therefore to command you the said constable of —— aforesaid, to take the said C. D., and him safely to convey to the house of correction at —— aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction, to receive the said C. D. into the said house of correction, there to imprison him,* [*and keep him to hard labour*] *for the space of —— calendar months; and for your so doing this shall be your sufficient warrant. Given under my hand and seal, at ——, in the county aforesaid, this —— day of ——, in the tenth year of the reign of our sovereign lady Queen Victoria.*

II. Commitment, in default of immediate payment of a penalty.

Berkshire: To the constable of ——, in the said county, and to the keeper of the house of correction at ——, in the said county.

Whereas C. D., late of ——, in the said county, labourer, was

on this day duly convicted before me, J. P. one of Her Majesty's justices of the peace for the said county, for that he the said C. D." [&c. stating the offence as in the conviction,] "*against the form of the statute in that case made and provided; and I the said J. P., thereupon adjudged the said C. D., for his said offence, to*" [&c. as in the conviction, to the words] *calendar months, unless the said sums should be sooner paid: and whereas the said C. D., being so convicted as aforesaid, and being now required to pay the said sums, hath not paid the same or any part thereof, but herein hath made default; these are therefore to command you the said constable of —— aforesaid, to take the said C. D., and him safely to convey to the house of correction at —— aforesaid, and there to deliver him to the said keeper thereof, together with this precept: and I do hereby command you the said keeper of the said house of correction, to receive the said C. D. into the said house of correction, there to imprison him [and keep him to hard labour] for the space of —— calendar months, unless the said sums shall be sooner paid; and for your so doing, this shall be your sufficient warrant. Given under my hand and seal, at ——, in the county aforesaid, this —— day of ——, in the tenth year of the reign of our sovereign lady Queen Victoria.*

See Arch. Peel's Acts, passim.

III. Commitment, in default of payment of a penalty within a limited time.

Berkshire: To the constable of ——, in the said county, and to the keeper of the house of correction at ——, in the said county.

Whereas C. D., late of ——, in the said county, labourer, was on the —— day of —— last past, duly convicted before [*me*] *J. P., one of Her Majesty's justices of the peace for the said county, for that he the said C. D.* [&c. stating the offence as in the conviction;] "*against the form of the statute in that case made and provided; and* [*I*] *the said J. P. thereupon adjudged the said C. D. for his said offence, to*" [&c. as in the conviction to the end of the adjudication;] *and* [*I*] *the said J. P. then and there ordered that the said sums should be paid by the said C. D. on or before the —— day of —— then next; and whereas the said C. D. hath not, on or before the said —— day of ——, paid the said several sums or any part thereof, nor hath he yet paid the several sums or any part thereof, but therein hath made default; these are therefore to command you the said constable of —— aforesaid, to take the said C. D. and him safely to convey to the house of correction at —— aforesaid, and there to deliver him to the said keeper thereof, together with*

this precept; and I do hereby command you the said keeper of the said house of correction to receive the said C. D. into the said house of correction, there to imprison him [and keep him to hard labour] for the space of —— calendar months, unless the said sums shall sooner be paid; and for your so doing, this shall be your sufficient warrant. Given under my hand and seal, at ——, in the county aforesaid, this —— day of ——, in the tenth year of the reign of our sovereign lady Queen Victoria. J. P.

See Arch. Peel's Acts, passim.

Warrant of Distress, &c.

In many statutes, by which a pecuniary penalty is inflicted for offences punishable upon a summary conviction, the penalty is directed to be levied by distress and sale of the goods and chattels of the offender, and in default of sufficient distress, the offender to be imprisoned, &c. In such cases, after conviction, a warrant of distress first issues; and upon the constable, to whom it is directed, returning that the defendant has no sufficient distress upon which he can levy the penalty, a commitment then issues, to take the defendant and imprison him.

In every such case, it shall be lawful for the justice, at his discretion, to order the offender so convicted to be kept and detained in safe custody until return shall be made to such warrant of distress, unless such offender shall give sufficient security, to the satisfaction of such justice, for his appearance before him on such day as shall be appointed for the return of the warrant of distress, such day not being more than eight days from the time of taking such security; and such security the said justice is hereby empowered to take by way of recognizance or otherwise, as to him shall seem right or proper. Or in case it shall appear to the satisfaction of such justice, either by the confession of the offender or otherwise, that he hath not goods or chattels within the jurisdiction of such justice, sufficient whereon to levy all such penalties and forfeitures, costs and charges, such justice may, at his discretion, without issuing any warrant of distress, commit the offender for such period of time, and in such and the like manner, as if a warrant of distress had been issued, and *nulla bona* returned thereon. 5 *G.* 4, *c.* 18, *s.* 1.

And by sect. 2, reciting, that by some Acts, certain penalties are to be recovered before a justice or justices of the peace, and he or they are authorized to issue a warrant for levying such penalties by distress and sale of the goods of the offender, but no further remedy is provided in case no sufficient goods can be found whereon to levy such penalties; it is enacted that

if it appear, either upon the return to a warrant of distress, or by the confession of the offender or otherwise, that there are no sufficient goods whereon to levy the penalty, &c., the justice may commit the offender to the common gaol, for any term not exceeding three calendar months, unless the sum adjudged to be paid, and all costs and charges of the proceedings shall be sooner paid; provided always that the amount of such costs and expenses shall be specified in such warrant of commitment.

And where an offender is committed for non-payment of a penalty, &c. if he shall, at any time during the period of his imprisonment, pay or cause to be paid to the keeper of the prison the full amount of the penalty, costs, and charges, it shall be lawful for such keeper, and he is hereby required, forthwith to discharge such offender from his custody. *Id. s.* 3.

By sect. 4, reciting, that whereas cases may occur where the recovery of such penalty, by distress and sale, may appear to the justice to be attended with consequences ruinous to the offender and his family: it is enacted, that justices shall be empowered, and they are hereby authorized, in all cases and upon all such occasions as to them shall seem fit, and where such consequences are likely to arise, to cause to be withheld the issue of any warrant of distress, and to commit the offender immediately after conviction, and in default of payment of the penalty, &c., to the common gaol or house of correction, for such time and in such manner as in that behalf is mentioned and directed by statute: provided it be by the desire and with the consent in writing of the party upon whose property the penalty would otherwise be to be levied.

By stat. 27 G. 2, c. 20, s. 1, in a warrant of distress, it shall be lawful for the justice to order and direct the goods to be sold within a certain time to be therein limited, so as such time be not less than four days, nor more than eight days, unless the penalty, together with the reasonable charges of taking and keeping such distress, be sooner paid. And by sect. 2, the officer may deduct the expenses of taking, keeping, and selling the distress.

And lastly, by stat. 33 G. 3, c. 55, s. 3, where a warrant of distress for a penalty, &c. is issued, and sufficient distress cannot be found within the limits of the jurisdiction of the justice granting it, then, on oath thereof made by one witness before any justice of any other county or place, (which oath shall be by him certified by indorsement on such warrant,) such penalty, &c., or so much thereof as may not have been before levied or paid, shall and may, by virtue of such warrant and indorsement, be levied by the person to whom such warrant was originally directed, by distress and sale of the goods of the party in such other county or place.

The following is the form of a

Warrant of Distress.

Berkshire: To the constable of —— in the said county, and to all other constables in and for the said county.

Whereas C. D., late of ——, in the said county, labourer, was on this day [or *on the —— day of —— instant,*] *duly convicted before* [*me,*] *J. P., one of Her Majesty's justices of the peace for the said county, for that he the said C. D.* [&c. stating the offence as in the conviction,] "*against the form of the statute in that case made and provided; and* [*I*] *the said J. P., thereupon did adjudge the said C. D. for his said offence to*" [&c. setting out the adjudication as in the conviction:] "*and whereas the said C. D., being so convicted as aforesaid, and being required to pay the said sums, hath not paid the same or any part thereof, but therein hath made default; these are therefore to command you forthwith to make distress of the goods and chattels of the said C. D., and if within the space of ——*" [not less than four, nor more than eight days; see 27 G. 2, c. 20, s. 1, supra.] "*days next after the making of such distress, the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay* [*one moiety of the said sum of ——, so forfeited as aforesaid, together with the said sum of —— for costs, unto A. B., who hath informed me of the said offence, and the said other moiety of the said sum of —— so forfeited as aforesaid unto the use of Her Majesty,*" or "*unto the overseers of the poor of the said parish of ——, where the said offence was committed, for the use of the poor of the said parish,*" [or as the statute may require;] "*rendering the overplus on demand unto the said C. D., the reasonable charges of taking, keeping, and selling the said distress being first deducted. And if no such distress can be made, that then you certify the same unto me, to the end that such further proceedings may be had therein, as to the law doth appertain. Given under my hand and seal, this —— day of ——, in the tenth year of the reign of our sovereign lady Queen Victoria.*

Constable's return thereto.

Berkshire: I, W. T., constable of ——, in the county aforesaid, do hereby certify to J. P., esquire, one of Her Majesty's justices of the peace for the said county, that by virtue of this warrant I have made diligent search for the goods and chattels of the within-mentioned C. D., and that I can find no sufficient

goods or chattels of the said C. D. whereon to levy the sums within mentioned. Witness my hand, the —— day of ——, in the year of our Lord, 1846.

Commitment for want of distress.

Berkshire: To the constable of ——, in the said county, and to the keeper of the house of correction at ——, in the said county.

Whereas C. D., late of ——, in the said county, labourer, was on the —— day of —— last past, duly convicted before [*me*] *J. P., one of Her Majesty's justices of the peace for the said county, for that he the said C. D.*" [&c. stating the offence as in the conviction:] "*against the form of the statute in that case made and provided; and* [*I*] *the said J. P. thereupon adjudged the said C. D., for his said offence, to*" [&c. setting out the adjudication as in the conviction;] "*and whereas afterwards, on the —— day of ——, in the year aforesaid,* [*I*] *the said J. P., issued a warrant to the constable of ——, commanding him to levy the said sums by distress and sale of the goods and chattels of the said C. D.; and whereas it appears to me, as well by the return of the said constable to the said warrant of distress as otherwise, that the said constable hath made diligent search for the goods and chattels of the said C. D., but that no sufficient distress can be found whereon to levy the same; these are therefore to command you, the said constable of —— aforesaid, to take the said C. D., and him safely to convey to the house of correction at —— aforesaid, and there to deliver him to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said house of correction, to receive the said C. D. into the said house of correction, there to imprison him* [*and keep him to hard labour*] *for the space of —— calendar months, unless the said sums shall be sooner paid; and for your so doing this shall be your sufficient warrant. Given under my hand and seal at ——, in the county aforesaid, this —— day of ——, in the tenth year of the reign of our sovereign lady Queen Victoria.*

If the commitment be good upon the face of it, the court of Queen's Bench, upon a *habeas corpus*, will not inquire into the validity of the conviction. *Re Richards et al.*, 13 *Law J.* 147, *m.* And on the other hand, if the commitment be bad upon the face of it, the court will not intend a good conviction to support it. *Re Tordoff*, 13 *Law J.* 145, *m.*

There are some cases where, from the peculiar manner in which the statute upon the subject is worded, the conviction and commitment are necessarily comprised in the same instrument, or where in fact there is no order or conviction, the statute warranting a commitment without any previous

conviction or order. In such a case, it should appear upon the face of the commitment, that the charge was heard and the evidence given in the presence of the prisoner; otherwise it will be deemed bad, and the prisoner will be entitled to be discharged. *Re Tordoff, supra.*

6. *Convictions, &c. how reviewed.*

By appeal.] An appeal against a conviction is by no means a matter of common right; it will not lie, unless given by the express words of some statute. *R.* v. *Hanson*, 4 *B.* & *A.* 519. There is no general statute upon the subject. The appeal, when given, is to the sessions of the county or borough, stated in the margin of the conviction; except that, in the case of convictions by the magistrates of a borough to which the crown has not granted a separate quarter sessions, the appeal must be to the quarter sessions of the county in which such borough is situate. *See* 5 & 6 *W.* 4, *c.* 76, *s.* 111. Whether it is to be to the next sessions after the conviction, or within a certain time after the conviction, or within what other time it must be lodged, must depend entirely upon the wording of the Act of parliament by which the appeal is given.

As to notice of appeal or recognizance: Whether a notice of appeal shall be given, or a recognizance entered into, or what notice or recognizance will be sufficient, must depend entirely upon the words of the statute by which the appeal is given or is regulated: in some cases the statute requires a recognizance only, and in that case a notice of appeal need not be given; *R.* v. *JJ. of Kent*, 6 *M.* & *S.* 258. *R.* v. *JJ. of Essex*, 4 *B.* & *A.* 276; in some cases a notice of appeal alone is required, and in that case, of course, a recognizance need not be entered into; in some cases both are required, and both must be given. Whatever is required in this respect by the statute, is deemed a condition precedent to the party's appealing; and the sessions have no jurisdiction whatever of the appeal, they cannot even allow it to be entered, until the directions of the statute in this respect have been complied with. *R.* v. *JJ. of Oxfordshire*, 1 *M.* & *S.* 446. But where a statute giving an appeal against a conviction, required that the magistrate, at the time of the conviction, should inform the party of his right of appeal, and that the party at the same time should give the magistrate a written notice of appeal, and should enter into a recognizance to try it with effect; a party being convicted, the magistrate told him of his right to appeal, and he entered into the necessary recognizance, but the magistrate did not tell him of the necessity of his giving him a written notice of appeal; and at the sessions, the magistrates, thinking they had no juris-

diction for want of this notice being given, refused to receive the appeal: the court of Queen's Bench, upon application, granted a mandamus to the sessions, commanding them to receive and hear the appeal, Lord Kenyon, C. J. saying, that it was the duty of the magistrate, when he informed the party of his right to appeal, to inform him also of the necessity of his giving a written notice; otherwise the party would be deluded by the act of the justice in taking the recognizance. *R.* v. *JJ. of Leeds*, 4 *T. R.* 583. The statute also directs to whom the notice shall be given,—sometimes to the justice, sometimes to the prosecutor—sometimes to both. Where it is to be given to the justice, if there be more than one, it must be given to all. Where three persons were convicted of unlawfully fishing, upon a joint hearing, and they gave a joint notice of appeal against the conviction; but the sessions refused to hear the appeal, because three separate convictions, one against each, and not one joint one against the three appellants, were returned: the court upon application awarded a mandamus to the sessions, to enter continuances and hear the appeal. *R.* v. *JJ. of Oxfordshire*, 12 *Law J.* 40, *m.*, 4 *Q. B.* 177.

The following may be the form of a notice of appeal:—

Berkshire, to wit: To ——, *of* ——, *in the said county.*

This is to give you [*and each and every of you*] *notice, that I, A. B., do intend, at the next general quarter sessions of the peace, to be holden in and for the said county of Berks, at* ——, *in the said county, to appeal against a certain conviction of me, the said A. B., by E. F., Esq., one of Her Majesty's justices of the peace for the said county, for having, as is therein and thereby alleged, on* ——, *at* ——, [&c. stating the offence;] *and that the cause and matter of such appeal are* [*that I am not guilty of the said offence; and that, &c.* stating any other ground of appeal the party may have:] *all of which premises, you* [*and each and every of you*] *are hereby desired to take notice. Dated, &c.*

In an appeal against a conviction under the Vagrant Act, for an obscene exposure of the person, it was holden a sufficient ground of appeal to state that the party was not guilty of the offence, although the offence consisted of three ingredients, the exposure of the person, that it was done in a place of public resort, and for the purpose of insulting some female. *R.* v. *JJ. Newcastle-upon-Tyne*, 1 *B.* & *Ad.* 933.

The sessions may either quash the conviction, for defects appearing upon the face of it, or quash or confirm it upon the merits. If they try the case upon the merits, the respondent must again prove the facts necessary to sustain the conviction; but neither he nor the appellant is confined to the evidence given before the convicting magistrate, unless otherwise directed by the statute giving the appeal. The judgment is merely that the conviction be confirmed or quashed, with or

without costs. Whether the sessions can award costs, will depend entirely upon the statute, regulating the appeal, giving authority to do so; there is no general statute upon the subject. *See R.* v. *JJ. of Hants*, 1 *B.* & *Ad.* 654.

By certiorari, &c.] In all cases where the *certiorari* is not taken away by statute, a summary conviction by a magistrate may be removed by it into the court of Queen's Bench, for the purpose of having it quashed for any errors appearing upon the face of it. The subject has been already fully considered, *ante*, p. 251. But where it appears by the conviction that the defendant appeared before the magistrate and pleaded, and the merits have been tried and that the defendant has not appealed against the conviction (where the appeal is allowed), or, if appealed against, such conviction has been affirmed; such conviction shall not afterwards be set aside or vacated in consequence of any defect of form whatever; but the construction shall be such a fair and liberal construction as will be agreeable to the justice of the case. 3 *G.* 4, *c.* 23, *s.* 3. This statute, however, does not cure the omission of a fact or circumstance necessary to constitute the offence. *R.* v. *Walsh*, 3 *Nev.* & *M.* 630.

A conviction cannot be amended. *R.* v. *Jukes*, 8 *T. R.* 625. The magistrate, however, before he returns it to the sessions, or upon a *certiorari*, may draw it up in a more formal manner than he had at first drawn it. *Ante*, p. 70.

If the commitment be bad upon the face of it, the party may apply for a *habeas corpus*, and thereupon be discharged. In several statutes creating offences punishable on summary convictions, (Peel's Acts for instance, 7 & 8 G. 4, c. 29, s. 73, and 7 & 8 G. 4, c. 30, s. 39,) a clause is inserted that no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. But there is no general enactment upon the subject; and where the statute creating the offence does not contain such a clause, a good conviction will not help a bad commitment. *Wickes* v. *Clutterbuck*, 2 *Bing.* 483.

But if, instead of convicting the defendant, the justice refuse to convict him, and dismiss the case, there is no mode of reviewing his decision; the court will neither grant a *mandamus*, requiring the magistrate to re-hear the case, nor award a *certiorari* to bring up the proceedings. *Exp. British and Foreign Patent Invention Company*, 7 *Dowl.* 614.

By action.] If a justice of the peace convict, in a case in which he has no jurisdiction, or if the conviction be bad upon the face of it, the party may maintain an action of trespass against him for any distress or commitment under it; for the

conviction in such a case, can be no justification. So, if a justice of the peace commit a party to prison upon a conviction, and the warrant of commitment be bad upon the face of it, he will in like manner be subject to an action of trespass, even although there be a good and valid conviction, unless indeed it be aided by some clause in the statute creating the offence, as already mentioned, *supra*. This subject will be treated of fully under the title "Justices."

CORDAGE.

See "Manufactures."

CORONER.

1. *How chosen*, p. 386.
2. *Inquisitions by him*, p. 387.
3. *His fees*, p. 390.
4. *How punishable for neglect of duty, &c.* p. 391.

1. *Coroner, how chosen.*

In counties.] In counties there are usually several coroners, the number being fixed by custom. If one of these die, or resign, or be dismissed from his office, a writ *de coronatore eligendo* issues from the Petty Bag Office in the Court of Chancery, directed to the sheriff of the county, commanding him to cause another to be chosen in his stead, in full county court, by the assent of the county. 2 *Hawk. c.* 9, *s.* 5, 6. And as none but freeholders are the suitors in the county court, it is therefore holden that the coroner must be elected by the freeholders only. *Id. s.* 10. The mode of election is appointed and regulated by stat. 7 & 8 Vict. c. 92. When the coroner is elected, he is sworn into office by the sheriff. 2 *Hawk. c.* 9, *s.* 7.

A coroner may now appoint a deputy, subject to the approval of the Lord Chancellor. 6 & 7 *Vict. c.* 83, *s.* 1. *See R. v. Perkins*, 14 *Law J.* 87 *m.*

In boroughs.] In every borough, having a separate court of quarter sessions, the council are to "appoint a fit person, not being an alderman or councillor, to be coroner of such borough,

so long as he shall well behave himself in his office," and they shall fill up every vacancy within ten days after it occurs. 5 & 6 *W.* 4, *c.* 76, *s.* 62.

2. *Inquisitions by him.*

In what cases.] By stat. *de officio coronatoris* (4 *Ed.* 1) the coroner shall take inquisition upon all persons slain, drowned, or suddenly dead. He shall also take inquisition upon all persons who die in prison. 2 *Hawk. c.* 9, *s.* 21. The coroner may also inquire of treasure trove; 4 *Ed.* 1, *supra*; but it is doubtful whether he has authority in any other matters. *See* 2 *Hawk. c.* 9, *s.* 35. We shall here consider chiefly his duties in case of death. If the death appear to have been occasioned by some other person, he must inquire as to the person who occasioned it, and as to those who were present, aiding and abetting, 4 *Ed.* 1, *supra*, or accessories before the fact; 2 *Hawk. c.* 9, *s.* 27; but he has no authority to inquire of accessories after the fact. *Id. s.* 26.

How.] By stat. 4 Ed. 1, (*supra,*) he is directed to "command four of the next towns, or five or six, to appear before him" in the place where the body lies. And by stat. 6 & 7 Vict., c. 12, s. 1, the coroner only within whose jurisdiction the body of any person, upon whose death an inquest ought to be holden, shall be lying dead, shall hold the inquest, notwithstanding that the cause of death did not arise within the jurisdiction of such coroner; and in the case of any body found dead in the sea, or any creek, river or navigable canal within the flowing of the sea, where there shall be no deputy coroner for the jurisdiction of the Admiralty of England, the inquest shall be holden only by the coroner having jurisdiction in the place where the body shall be first brought to land. *See R.* v. *Hinde*, 13 *Law J.* 150 *m.* And by sect. 2, for this purpose, a detached part of the county, shall be deemed part of that by which it is surrounded, or (if surrounded by two or more) by that with which it has the longest common boundary. This, in practice, is done, by the coroner directing his precept to the constable of the hundred, requiring him to summon a jury to appear before him at a certain time and place.

When the jury appear, at the time and place appointed, they are sworn and charged by the coroner. The coroner and jury must then view the body; for the coroner has no authority to take an inquisition of death, except *super visum corporis.* 2 *Hawk. c.* 9, *s.* 23. If it have been buried, therefore, the coroner may cause it to be disinterred; or, if it have been buried such a length of time, that from decomposition commencing it is useless to disinter it, the township or gaoler may

be amerced. *Id.* And this view must be had, before the inquiry is proceeded in; *R.* v. *Ferrand*, 3 *B.* & *A.* 260; but it need not be had by the coroner and the jury at the same time, 6 & 7 Vict. c. 83, s. 2. Nor is it necessary that the inquest should be holden in the same place where the body has been viewed; after the view, the coroner may adjourn the inquest to another place. 2 *Hawk. c.* 9, *s.* 25. It may be necessary here to mention, that the court of the coroner is not a public open court, in which the public have a right to be present; at least it is not so upon an inquisition of death; for it is partly a preliminary inquiry, in the nature of the proceeding before a grand jury, and no person but the coroner, the inquest, and the witness immediately under examination, has a right to be present, if the coroner object to it. *Garnett* v. *Farrand*, 6 *B.* & *C.* 611.

If any person summoned on the jury, or as witnesses, fail to attend, the coroner may fine him. 7 & 8 *Vict. c.* 92, *s.* 17.

Every coroner, "upon an inquisition taken before him, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall put in writing the evidence given to the jury before him, or as much thereof as shall be material; and shall have authority to bind by recognizance all such persons as know or declare any thing touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the next court of oyer and terminer or gaol delivery, or superior criminal court of a county palatine, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court:" 7 *G.* 4, *c.* 64, *s.* 4: otherwise the court may fine him. *Id. s.* 5.

As to medical witnesses: the coroner may issue an order for the attendance of any legally-qualified medical practitioner, who attended the deceased in his last illness, or, if he were not so attended, of any legally-qualified medical practitioner in or near the place of the death; and the coroner may direct a *post mortem* examination of the body, with or without an analysis of the contents of the stomach or intestines. 6 & 7 *W.* 4, *c.* 89, *s.* 1. So the coroner may order the attendance of other legally-qualified medical practitioners, if a majority of the jury require it. *Id. s.* 2. And where any such order shall be personally served upon such practitioner, or shall have been received by him in sufficient time for him to have obeyed it, or shall have been served at his residence, if he do not obey such order he shall forfeit 5*l.*, upon complaint thereof made by the coroner or any two of the jury before any two justices having

jurisdiction in the parish or place where the inquest was held, or where such medical practitioner resides; and such two justices are hereby required, upon such complaint, to proceed to the hearing and adjudication of such complaint, and (if such medical practitioner shall not show to the said justices a good and sufficient cause for not having obeyed such order) to enforce the said penalty by distress and sale of the offender's goods, as they are empowered to proceed by any act of parliament for any other penalty or forfeiture. *Id. s.* 6.

The fee to such medical witness, for attending to give evidence, is one guinea; and for a *post mortem* examination, with or without analysis of the contents of the stomach, &c., and attending to give evidence, two guineas: 6 & 7 *W.* 4, *c.* 89, *s.* 3, *and schedule B:* to be paid to him by the coroner, immediately after the termination of the proceedings of the inquest, and included in the account of the coroner's fees, 1 *Vict.*, *c.* 68, *s.* 2. And the justices at quarter sessions, and the town council in boroughs, shall make out a schedule of the several "fees, allowances and disbursements," which may be paid by the coroner upon the holding of an inquest, other than the above fees to medical witnesses. *Id. s.* 1. And within four months after taking any inquisition, an account must be rendered of the sums thus paid, by the coroner of a county, to the justices in quarter sessions, and by the coroner of a borough to the town council, with vouchers, &c.; which they shall be paid by order on the treasurer of the county or borough, together with 6*s.* 8*d.* for each inquest, over and above their ordinary fees. *Id. s.* 3.

The finding of the jury, or inquisition, is engrossed upon parchment, *see R.* v. *Beavers*, 1 *East*, *P. C.* 583, with a caption setting out their names at length; it must then be signed by both the coroner [or his deputy, 6 & 7 *Vict. c.* 83, *s.* 1. *R.* v. *Perkin*, 14 *Law J.* 87 *m*,] and jurors, and it is usual for them to seal it also. *See R.* v. *JJ. Norfolk*, 1 *East*, 383. Formerly there were a number of defects which were holden to render an inquisition invalid. But in nearly all these cases, it may now be amended. 6 & 7 *Vict.*, *c.* 83, *s.* 2. *And see Arch. Pr. Cr. Off.* 174, 175.

Warrant for murder or manslaughter.] If the finding of the inquest be for murder or manslaughter, and they do not name any particular person, nothing further can be done by the coroner; but if they name any person as the offender, the coroner may commit him, if he be present, to the common gaol, or to any house of correction near to where the assizes, &c. are to be holden; 5 & 6 *W.* 4, *c.* 38, *s.* 3; if absent, he may grant a warrant to apprehend him.

Felo de se.] If the inquest find the deceased *felo de se*, that

is, that he voluntarily killed himself when of sound mind and of the age of discretion, the coroner "shall give directions for the private interment of the remains of such person *felo de se*, without any stake being driven through the body of such person, in the churchyard or other burial ground of the parish or place in which the remains of such person might by the laws or custom of England be interred if the verdict of *felo de se* had not been found against such person;—such interment to be made within 24 hours from the finding of the inquisition, and to take place between the hours of nine and twelve at night," 4 *G.* 4, *c.* 52, *s.* 1, and without the rights of christian burial. *Id. s.* 2.

Deodand.] If the inquest find the death to have happened *per infortunium*, occasioned by some animal, or by some thing without life which is not attached to the freehold, as, for instance, that the deceased was killed by a fall from a horse or a cart, or the like, without the default or procurement of any person,—the animal or thing which caused the death is forfeited to the Queen, 1 *Hawk. c.* 26, *s.* 3, and the inquest set a value upon it. *Id. s.* 8. If a thing without life be the cause of the death, if it be standing still at the time, only that part of it which was the immediate cause shall be forfeited as a deodand; but if it were moving, then the whole shall be a deodand: as for instance, if a man be killed by a fall from the wheel of a waggon which is not moving, the wheel only is forfeited; but if the waggon were moving, the whole waggon, and the horses also which were drawing it, are a deodand. *Id. s.* 6. If a man be killed by a fall from a waggon, whilst moving, the waggon and horses are forfeited, (as has just now been mentioned,) but not the loading; but if he be killed by a wheel passing over him, the waggon, horses and loading are all forfeited. *Id.* If a man fall from a ship at sea, and be drowned, the ship is no deodand; but if the ship be moving in fresh water, it is forfeited, but not the loading. *Id.* It has already been observed, that it is only in the case of death *per infortunium* that a deodand can be forfeited; and therefore if the jury find that the death was caused by murder or manslaughter, there cannot be a deodand. *R.* v. *Polwart, Q. B. E.* 1841, *MS.* 10 *Law J.* 118, *m.*

The coroner must make out an account of all deodands, and certify them into the court of Exchequer, and transmit the account to the commissioners of the treasury and the commissioners of audit. 3 & 4 *W.* 4, *c.* 99, *s.* 29.

3. *Coroner's Fees.*

What fees, and how paid.] For every inquisition (not taken upon the view of a body dying in gaol) which shall be duly

taken in any township or place contributing to the county rate, the coroner shall have 20*s.* and also 9*d.* for every mile he shall be compelled to travel from his usual place of abode to take such inquisition: to be paid by order of the justices in sessions, out of the county rates; for which order no fee shall be paid. 25 *G.* 2, *c.* 29, *s.* 1. The 9*d.* per mile is to be paid to him for the number of miles he has to travel from his home, but not for the number of miles he travels in returning. *R.* v. *JJ. of Oxfordshire*, 2 *B.* & *A.* 203. And if he hold two or more inquisitions on the same day, at the same place, he is only entitled to one sum of 9*d.* per mile from the place of his abode to the place of taking the inquisition. *R.* v. *JJ. of Warwick*, 5 *B.* & *C.* 430. The justices are judges whether an inquisition in a particular case was necessary, and duly taken, or not; and if they refuse to allow the coroner's fees for it, because they were of opinion that there was no ground for holding it, the court of Queen's Bench will not interfere to compel them. *R.* v. *JJ. of Kent*, 14 *East*, 229. *See* 1 *Vict. c.* 68, *s.* 3, *ante*, p. 389.

And for every inquisition taken on view of a body dying in prison, the coroner shall be paid so much as the justices at sessions shall allow, not exceeding 20*s.*, to be paid in like manner. 25 *G.* 2, *c.* 29, *s.* 2.

In boroughs, in which a separate court of quarter sessions shall be holden, the coroner of such borough, for every inquisition which he shall duly take within such borough, shall be entitled to have the sum of 20*s.*, and also the sum of 9*d.* for every mile, exceeding two miles, he shall be compelled to travel from his usual place of abode to take such inquisition, to be paid by the treasurer of the borough out of the borough fund, by order of the court of quarter sessions of such borough. 5 & 6 *W.* 4, *c.* 76, *s.* 62. *See* 1 *Vict. c.* 68, *s.* 3, *ante*, p. 389.

4. *Neglect of Duty, &c., by Coroners.*

"If any coroner, not appointed by virtue of an annual election or nomination, or whose office of coroner is not annexed to any other office, shall be lawfully convicted of extortion, or wilful neglect of duty or misdemeanor in his office:" the court before whom he is convicted, may adjudge him to be removed from his office; and thereupon, if he were elected by the freeholders, a writ shall issue to elect another; or if appointed in other manner, upon notice of the conviction to the person having the appointment, he shall appoint another to the office. 25 *G.* 2, *c.* 29, *s.* 6. *See R.* v. *Harrison*, 1 *East*, *P. C.* 482. Pecuniary penalties of 100*s.* by stat. 3 H. 7, c. 1, and of 40*s.* by stat. 1 H. 8, c. 7, were also inflicted on coroners for being remiss in the execution of their duty.

Also, where a coroner, being imprisoned out of the county, was prevented from executing the duties of his office, this was holden in Chancery to be a good ground for removing him from his office, although in his absence another coroner of the same county had performed his duties. *Exp. Parnell*, 1 *Jac. & W.* 451. In the same case it was ruled that the lord chancellor has authority, independently of the above statute, 25 G. 2, c. 29, to remove a coroner from his office for neglect of duty; and the practice is, to issue the writ *de coronatore exonerando*, and the writ *de coronatore eligendo*, at the same time. *Id.*

CORPORATION.

See "*Constable*," "*Coroner*," "*Justices*," "*Sessions*."

COSTS.

Justices of the peace have no authority at common law to award costs, upon any proceeding before them; whatever authority they have upon the subject, is given to them entirely by statute. In cases of summary convictions, this authority is given to them, in most cases, by the statute creating the offence; but a general authority is also given to them by stat. 18 G. 3, c. 19, which we have already considered *ante*, p. 365, under the title "*conviction*." In cases of indictments for felony, and for some species of misdemeanor, the expenses of the prosecutor and witness, &c. may be ordered by the court in which the case is prosecuted, or the prosecutor bound over to appear, and is paid by the treasurer of the county or borough, out of the county or borough rate. *See post, tit. Trial.* In indictments for a nuisance arising from the furnace of a steam-engine, the court have power to award costs to the prosecutor, to be paid by the defendant; 1 & 2 *G.* 4, *c.* 41, *s.* 1; and in indictments for the non-repair of a highway, the court may award costs to the prosecutor, to be paid by the parties indicted, if the defence appears to be frivolous or vexatious. 5 & 6 *W.* 4, *c.* 50, *s.* 98. And generally, the cases in which costs may be awarded by statute, will be found under their proper heads, in the course of this work.

Where costs are given in a conviction or order, by justices out of sessions, they must specify the amount; they cannot give costs generally, to be taxed by their clerk or other officer. *Selwood* v. *Mount*, *MS. Q. B. E.* 1841. 1 *Q. B.* 726. And where costs are given by the sessions in appeals, &c., care

must be taken that the sum be specified in their order before the end of the sessions, for the justices or recorder have no authority by law to do so afterwards; and if time be required for this purpose, to get the costs taxed, or the like, the sessions must be adjourned. *R.* v. *Long, MS. Q. B. E.* 1841. 1 *Q. B.* 740. *See R.* v. *JJ. of Westmoreland, Per Coleridge, J.* 12 *Law J.* 113, *m. Semb. cont.* The law in this respect, however, is intended to be altered by a bill now before parliament, relating to the removal and settlement of the poor.

COTTON AND WOOLLEN MILLS.

See "Manufactures."

COUNTERFEITING.

See "Coin."

COUNTY, DIVISION OF.

See "Sessions, Petty."

COUNTY RATE.

1. *For what purposes*, p. 393.
2. *Rate, when and how made, &c.* p. 394.
3. *Rate, how levied and paid over*, p. 404.
4. *Business at sessions, relating to it*, p. 408.
5. *Appeal*, p. 409.
6. *Borough rate*, p. 410.

1. *For what Purposes a County Rate may be made.*

The purposes to which a county rate is applicable, are noticed under their proper heads, in the course of this work. The following concise list of them is given, for the purpose of referring to them.

Apprentices, cost of prosecuting the master for ill-treatment of. 32 *G.* 3, *c.* 57, *s.* 11. *See ante*, p. 120.

Bridges, repairing. 22 *H.* 8, *c.* 5. 1 *Ann. c.* 18. *See ante*, p. 232.

Coroner's fees. 25 G. 2, c. 29. 1 Vict. c. 68. *See ante*, p. 391.

Dead bodies cast on shore, burial of. 48 G. 3, c. 75, s. 6. *Post*, p. 418.

Fine upon the county, expenses of litigating and setting it aside. *R.* v. *Essex*, 4 *T. R.* 591.

Gaols and houses of correction, building and repairing: 4 *G.* 4, *c.* 64; for setting the prisoners to work; *Id.* Salaries to chaplain, officers, &c. *Id.*

Insolvents, expenses of bringing them up before a commissioner on circuit, and the expenses of court-houses, clerks, &c. 1 & 2 *Vict. c.* 110, *s.* 109.

Lunatics, county asylums for. 8 & 9 *Vict. c.* 126.

Prisoners, charges of conveying them to prison; 27 G. 2, c. 3, s. 1, *ante*, p. 300; gaoler's fees for; 55 G. 3, c. 50. 56 G. 3, c. 60; allowance to, on being discharged; 5 G. 4, c. 85, s. 22, &c.; relief of, in the Queen's Bench, Fleet and Marshalsea prisons, 53 G. 3, c. 113.

Prosecutions, expenses of; 7 G. 4, c. 64, s. 22, &c.; but not for the prosecution of any misdemeanors not enumerated in 7 G. 4, c. 64, s. 23, even although the prosecution were carried on by order of a magistrate. *See R.* v. *W. R. Yorkshire*, 7 *T. R.* 377.

Shire-hall, repairing. 7 G. 4, c. 63.

Transportation, removal of prisoners for the purpose of. 5 G. 4, c. 84, s. 21.

Treasurer of county, his salary, &c. 12 G. 2, c. 29, s. 11. 55 G. 3, c. 51, s. 17.

Vagrants, costs of prosecuting, &c. 5 G. 4, c. 83, ss. 9, 12.

Weights and measures, procuring models of. 5 & 6 W. 4, c. 63, s. 17.

2. *Rate when and how made, &c.*

When according to the Old Assessments.

Formerly the charges upon a county for such purposes as above-mentioned, were provided for by several Acts of Parliament, and levied under separate rates: there was no general county-rate. This, besides being harrassing and inconvenient, was found to be very expensive, the expense of collection being often more than the amount required. To remedy this, the stat. 12 G. 2, c. 29, s. 1, after reciting the above statutes, enacted that the justices of the peace, at their general or quarter sessions, shall have full power and authority, from time to time, to make "one general rate or assessment for such

sum or sums of money as they in their discretions shall think sufficient to answer all and every the ends and purposes of the before-recited Acts, instead and in lieu of the several separate and distinct rates directed thereby to be made, levied, and collected; which rate shall be assessed upon every town, parish, or place within the respective limits of their commissions, in such proportions as any of the rates heretofore made in pursuance of the said several Acts have been usually assessed;" and the several and respective sums so assessed, shall be collected by the high constables of the respective hundreds and divisions in which any town, parish, or place doth lie, in such manner and at such times as is hereinafter directed. 12 *G.* 2, *c.* 29, *s.* 1. But no new rate shall be made, until it shall appear to the said justices at their respective general or quarter sessions, by the accounts of their treasurer or otherwise, that three-fourths of the money collected by virtue of the preceding rate, have been expended for the uses and purposes aforesaid. *Id. s.* 10.

In what Cases, a New Assessment.

The rate under the above statute, 12 G. 2, c. 29, was to be made upon the several parishes, &c. in the county, in the proportions usually adopted in rating under the former Acts of Parliament. As these proportions however had from several causes become very unequal, it was thought right, in all cases where circumstances should require it, to enable the justices at sessions to assess each parish, &c. in the county, according to a pound rate of the annual value of the property within it. This was done by stat. 55 G. 3, c. 51, s. 1, by which it was enacted, that the justices at their quarter sessions, or at any adjournment thereof, whenever circumstances shall appear to require it, may order and direct a fair and equal county-rate to be made, for all the purposes to which the county stock or rate is liable, according to the directions therein mentioned; and for that purpose to assess and tax every parish, township, and other place, whether parochial or extra-parochial, within the limits of their commissions (*see R.* v. *Hayward*, 6 *Ad.* & *El.* 590,) rateably and equally, according to a certain pound-rate (to be from time to time fixed and publicly declared by such justices) of the full and fair annual value of the messuages, lands, tenements, and hereditaments, rateable to the relief of the poor therein. 55 *G.* 3, *c.* 51, *s.* 1.

How made.

Committee of justices to make county rate.] By stat. 8 & 9 Vict. c. 111, s. 1, the justices of the peace of every county in

England, assembled at their general or quarter sessions of the peace, or at any adjournment thereof, may, from time to time, as often as they may deem it necessary, "appoint any number of justices, not exceeding eleven in number nor less than five, to be a committee for the purpose of preparing fair and equal county rates, or of altering and amending such rates from time to time as circumstances may require." *Sect.* 1. And they may appoint a clerk to assist them. *Id. s.* 3. And the committee, from time to time, "may make such allowances and compensations to their clerk, and to the overseers, constables, collectors, surveyors, or other persons employed in the execution of this Act, as to them shall appear reasonable and proper, which, together with the costs of printing and other expenses necessarily incurred by the said committee in or about the preparing or amending any rate, shall be paid, by an order of the court of general or quarter sessions of the peace, out of the county stock." *Id. s.* 10.

Their meetings.] The committee so appointed, "shall hold their first meeting after their appointment at such time and place as shall be fixed by the said court of quarter sessions, and their subsequent meetings at such times and places as they shall themselves appoint for carrying this Act into execution; and at every meeting of the said committee, if three or more members thereof are present, they shall be competent to act as fully and effectually as if all the members of the said committee were present." *Id. s.* 2.

What property rateable.] "The property liable to be assessed towards the county rate, shall be taken to be the property which in any parish or place maintaining its own poor is liable to be rated to the relief of the poor, or which in any place not maintaining its poor would be liable to be rated for the relief of the poor if such place were a parish." *Id. s.* 5.

Committee may call for returns, poor rates, valuations, &c.] For the purpose of preparing such fair and equal county rates, "the said committee, by their order in writing, to be signed by their clerk, may from time to time, as often as they may deem it necessary, direct the overseers of the poor,—constables, assessors, and collectors of public rates of or for any parish, township, or place within the county,—and all other persons having the custody or management of any public or parochial rates or valuations of any such parish, township, or place,—to make returns in writing to the said committee, at such times and places as they may appoint, of the amount of the full and fair annual value [that is to say, the net annual value of property, as it is required to be estimated for the purpose of assessing the poor-rate, *Id. s.* 6,] of the whole or of any part of

the property within the parish, township, or place liable to be assessed toward the county rate, together with the date of the last valuation for the assessment of such parish, and the name of the surveyor by whom the valuation was made; and the overseers of the poor required to make any such return in respect of any parish, township, or place maintaining its own poor,—and the constable or other person required to make any such return in respect of any place not maintaining its own poor,—shall, before they present the same to the said committee, lay the same before a vestry meeting of the parish, township, or place for which they act, or (where no vestry meeting is held) before some other meeting of the inhabitants of such place, if any such there be, at which the public business of such place is commonly transacted." *Id. s.* 4.

And "the said committee may from time to time, as often as they may deem it necessary, by their order in writing, signed as aforesaid, require the said overseers of the poor, constables, assessors, collectors, and any other persons whomsoever, to appear before them when and where and as often as the said committee may deem expedient, and to produce all parochial and other rates, assessments, valuations, apportionments, and other documents in their custody or power relating to the value of or assessment on all or any of the property within the several parishes and places aforesaid which may be liable to be assessed toward the county rate,—and to be examined on oath, and answer such questions as the said committee may put to them respectively touching the said rates, assessments, valuations, or apportionments, or the value of the property aforesaid; and the said committee shall be authorized and empowered to administer such oath, and to examine the parties upon oath as aforesaid." *Id. s.* 7.

And "every overseer of the poor, constable, assessor, collector, or other person, so required to make returns, or to appear as aforesaid, who shall, without any reasonable excuse, neglect to make such returns in writing as aforesaid, or wilfully make any false return,—and every person who shall neglect or refuse to appear when required so to do as aforesaid, or to be sworn or examined, or to produce such documents as herein-before provided,—shall forfeit a sum not exceeding twenty pounds, to be prosecuted and recovered, by order of the said committee, before any two of Her Majesty's justices of the peace." *Id. s.* 8.

And "if any overseers neglect to make any such return in writing as aforesaid, or wilfully make any false return or statement of the amount of the full and fair annual value of the property within the parish, township, or place liable to be assessed towards the county rate,—any court of general or quarter sessions of the peace, upon the report of the said committee, may order that the whole of the expenses incurred by

the said committee in ascertaining the amount of the full and fair annual value of the same, shall be charged upon the parish, township, or place of which the overseers have been guilty of such neglect or misconduct as aforesaid, in addition to the proportion of the county rate to be paid by such parish, township, or place; and such expenses shall be raised, levied, and collected by such and the like ways and means, as county rate can or may be raised, levied, and collected, and shall be paid therewith,—due distinction being made, in case of every such additional assessment, between the sum or sums charged for any such expenses and the sum or sums assessed for the county rate." *Id. s.* 11.

In what cases a new valuation.] "The said committee may from time to time, and so often as they may think fit, by their order in writing, to be signed as aforesaid, direct that the whole or any part of any parish, township, or place within the county, shall be valued, and may appoint one or more person or persons to make such valuation; and the person or persons so appointed, may at all reasonable times, and with or without assistants, enter upon, view, examine, survey, and measure all and any lands, houses, or other property within such parish, township, or place, liable to be assessed toward the county rate, in order to ascertain the value at which the same ought respectively to be charged." *Id. s.* 9.

Costs thereof.] And "in any case where any committee appointed as aforesaid have directed the whole or any part of any parish, township, or place to be valued, and where in the rate afterwards allowed and confirmed by any court of quarter session upon the report of such committee, such parish, township, or place is rated on a sum greater than the sum set forth in the returns made to such committee by the overseers of the poor, constable, or other person required to make such return in any place not maintaining its own poor,—if there be no appeal against the rate on such parish, township, or place at the general or quarter session holden next after such confirmation or allowance thereof, the justices of the peace at such session shall order the overseers, constable, or other person as aforesaid of such parish, township, or place to pay the amount of the expenses incurred in making such valuation;—and in any such case as aforesaid, if there be an appeal to the justices of the peace at any general or quarter session against the rate, on the ground that such parish, township, or place is rated on a sum beyond the fair annual value of the property therein, and if on such appeal such rate is confirmed as to such parish, township, or place, or if it be not reduced to or below the sums set forth in the returns made to such committee as aforesaid, the justices of the peace at such session shall order the over-

seers, constable, or other person as aforesaid of such parish, township, or place to pay the amount of the expenses incurred in making the valuation under the direction of the committee; and such expenses shall be raised, levied, and collected by such and the like ways and means as county rate can or may be raised, levied, and collected, and shall be paid therewith,—due distinction being made, in the case of every such additional assessment, between the sums charged for or on account of any such expenses and the sum or sums assessed as and for the county rate." *Id. s.* 21.

Notice thereof to overseers, &c.] And when and so soon as the committee "have prepared any county rate, in which the total amount of the annual value of the property in any parish or place within the county is estimated at a greater or less amount than in the last preceding county rate, they shall cause such rate to be printed in such form as they may think proper, and shall forthwith cause to be sent by the general post or otherwise one copy of the same to every acting justice of the peace for the county, and to the overseers of the poor, constables, or other persons charged with the collection or levy of the county rate in every parish and place within such county; and such overseers of the poor, constables, or other persons shall, within twenty-one days after the receipt of such rate, call a vestry meeting of such parish or place, and shall submit the said copy of the said rate to such vestry meeting; and any person rated to the relief of the poor, or liable to contribute to the county rate, in such parish or place, may at all reasonable times inspect and examine the said copy of the said rate, whilst the same remains in the custody of any such overseer, constable, or other person, and take extracts or copies therefrom, without the payment of any fee for the same." *Id. s.* 12.

Objections to the same before the committee.] And "together with the copy of such proposed rate, there shall also be sent by the said committee to the overseers of the poor or constable of every such parish or place, or other person as aforesaid, a notification of a reasonable time, not less than one calendar month, within which any objections to the proposed rate may be forwarded to the said committee by such overseers or constable or other person as aforesaid, or by any person affected by such rate; and the said committee shall fix a time and place when and where such objections will be taken into consideration by the said committee, and for hearing the parties making such objections." *Id. s.* 13.

Rate allowed and confirmed by quarter sessions.] And "when any proposed rate has been finally corrected and approved of by the said committee, they shall lay the same before the court

of general or quarter sessions holden next thereafter; and such court shall thereupon order public notice to be given in one or more of the newspapers usually circulated within the county, that such rate will be taken into consideration at the next general or quarter session of the peace to be held for the said county; and at such general or quarter session of the peace, the court shall proceed to take the same into consideration, and to alter and amend the same as to them may seem proper, and, if they think fit, to allow and confirm the said rate, or, instead of making any alteration in the said rate, or allowing and confirming the same, to refer back the said rate for amendment to the said committee, and to adjourn the consideration thereof to some future general or quarter session of the peace; and in such last-mentioned case, the said committee shall have the same powers and authorities for requiring returns and ascertaining the value of property liable to be assessed toward the county rate, in order to the revising or amending of the said rate, as are herein-before given to them for preparing the same; and all the clauses and provisions herein-before contained for preparing any rate, shall be applicable in every respect to the revision or amendment of the same; and any amendment or alteration of such rate by the said committee, shall be reported and taken into consideration at the general or quarter session of the peace to which the consideration thereof was adjourned; but before any alteration or amendment of the said rate made by the said committee be allowed or confirmed by the court of general or quarter session of the peace, the said committee shall send at least fourteen days previous notice thereof, by post or otherwise, to every parish and place with respect to which such alteration or amendment is made." *Id. s.* 14.

And "when the court of general or quarter sessions of the peace have so allowed and confirmed any rate, the same shall be taken to be made, and shall be valid, legal, and effectual, to all intents and purposes, notwithstanding any irregularity may have arisen in the making thereof, and notwithstanding the officers of any parish or place may have omitted to make the returns herein-before mentioned,—subject nevertheless at all times to appeals against the same as herein-after provided; and the said court shall cause copies of the said rate to be printed, and shall direct one of such copies to be sent to every acting justice of the peace for the county, and one copy to the overseers of the poor, constable, or other person charged with the collection and levy of the county rate in every parish and place within the said county." *Id. s.* 15.

Appeal.] And "if at any time after the said rate has been made as aforesaid, any overseer or overseers of the poor, constable, or other person charged with the collection and levy of

county rate in any parish or place, or other inhabitant or inhabitants thereof, have reason to think that such parish, township, or place is aggrieved by any such rate,—whether it be on account of some one or more of them being without sufficient cause omitted altogether from the rate,—or on account of such parish, township, or place being rated on a sum beyond the full and fair annual value of the property therein liable to be assessed toward the county rate,—or on account of some other parish or parishes, township or townships, place or places, being rated on a sum less than the full and fair annual value of the property therein liable to be assessed toward the county rate,—such overseer or overseers of the poor, constable, or other person, or inhabitant or inhabitants, may appeal to the justices of the peace for the county, at the general or quarter session to be holden next after the session at which such rate was allowed and confirmed, against such part of the rate only as may affect the parish or parishes, township or townships, place or places which appear to be over-rated or under-rated, or omitted altogether from the rate as aforesaid, subject to the provisions herein-after contained." *Id. s.* 16.

Notice of appeal, and hearing.] And "if in any case, where any overseer or overseers, constable, or other person as aforesaid, of one parish or place, appeals against the rate on any other parish or place, on account of the same being altogether omitted from such rate, or on account of the same being rated at less than the full and fair annual value thereof as aforesaid, such overseer or overseers, constable, or other person shall give twenty-one days previous notice in writing of the intention to appeal, and of the cause and matter thereof, to the overseers of the poor, or, where there are no such overseers, to the constable or other person charged with the collection and levy of county rate, in such other parish or place;—and if in any case where any such overseer or overseers, constable, or other person appeal against the rate on the ground that any parish, township, or place is rated on a sum beyond the full and fair annual value of the rateable property therein, such overseer or overseers, constable, or other person shall give twenty-one days notice thereof in writing, with the cause and matter thereof, to the clerk of the peace of the county:—the said justices shall be empowered to hear and determine such appeal in manner by this Act directed, and either to confirm such parts of the rate as have been appealed against, or to correct such inequalities or omissions as shall be proved to exist therein, in such manner as to them the said justices may appear fair, just, and equitable; but no such rate shall upon any appeal be quashed or destroyed, in regard to any other parish, township, or place, unless in cases where the justices of the peace in general or quarter session assembled, or the major

part of them, deem it necessary to proceed to the making of an entire new rate, and where they proceed therein according to the provisions of this Act." *Id. s.* 16.

Or, "the court of general or quarter session of the peace, upon any such appeal, instead of hearing the said appeal, may order, upon the application of the appellant or respondent in such appeal, a survey and valuation of their respective parishes, townships, or places, and shall fix the next or some subsequent session for receiving such survey and valuation, and for hearing and determining the said appeal, and such court shall also thereupon appoint a proper person or persons to make such survey and valuation; and the person or persons so appointed, shall for that purpose have full power, with or without assistants, to enter upon, view, and examine, survey, measure, and value, all and any lands, houses, and property liable to be assessed toward the county rate within the parishes, townships, and places mentioned in such order; and such survey and valuation shall be reported to the general or quarter session fixed as aforesaid for receiving the same; and the court then and there assembled shall hear and determine the said appeal in the manner herein-before set forth." *Id. s.* 17.

Costs of appeal, &c.] "The charges and expenses of and attending any survey and valuation ordered to be made by any court of quarter sessions in such appeal as aforesaid, shall be deemed costs in such appeal, and abide the event thereof; and the court before which any such appeal is heard and determined, may order the costs in and about such appeal to be paid by either party, appellant or respondent, as they in their discretion may think fit; but where any appeal is made on the ground that any parish, township, or place is rated on a sum beyond the full and fair annual value of the property therein, if the court before which such appeal is heard determine in favour of the appellants, such court shall ascertain the costs and charges incurred by such appellants in and about such appeal, and shall order the treasurer of the county-rates to pay the same to such appellants out of the public stock of the county in his hands." *Id. s.* 20.

Obstructing surveyors, &c.] "Every person who in any manner wilfully resists or obstructs any overseer, collector, surveyor, or other person in the execution of his or their duty under this Act, shall forfeit and pay any sum not exceeding five pounds, to be prosecuted and recovered before any two or more of Her Majesty's justices of the peace for the county wherein the offence is committed." *Id. s.* 18.

Proceedings for penalties.] "All penalties and forfeitures by this Act authorized to be imposed, for any offence against the

same, shall, upon proof and conviction of the offences respectively before any two justices, as herein-before directed, either by the confession of the party offending, or by the oath of any credible witness or witnesses (which oath such justices are hereby authorized to administer,) be levied, together with the costs attending the information, summons, and conviction, by distress and sale of the goods and chattels of the offender, by warrant under the hands of the justices before whom the party may have been convicted, or, on proof of such conviction, by a warrant under the hands of any two justices (which warrant such justices are hereby empowered and required to grant); and the overplus, (if any), after such penalties and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner of such goods and chattels; and if upon the return of such warrant, it appear that no sufficient distress can be had thereupon, then it shall be lawful for any such justices as aforesaid, by warrant under their hands, to cause such offender to be committed to the common gaol or house of correction of the county where the offender may be or reside, there to remain without bail or mainprize for any term not exceeding three calendar months, unless such penalties and forfeitures, and all reasonable charges attending the same, be sooner paid and satisfied; and the said penalties and forfeitures, when recovered, shall be paid to the treasurer of the county in which such offence may have been committed or forfeiture incurred, to be applied in aid of the rates of the said county." *Id. s.* 19.

Rates on liberties, extra parochial places, &c.] In liberties and franchises, having a separate commission of the peace, and not subject to the jurisdiction of the county justices, and which did not contribute to the county-rate before stat. 12 G. 2, c. 29, hereinbefore mentioned, the justices of such liberties or franchises shall have the same powers and authorities within their respective limits, as are given by the said act to the justices of counties. 13 *G.* 2, *c.* 18, *s.* 7. *See Bates* v. *Winstanley*, 4 *M. & S.* 429. *R.* v. *Clark*, 5 *B. & A.* 665. *R.* v. *Berwick-upon-Tweed*, 8 *B. & C.* 327. *And as to borough-rates, see post*, p. 410.

Lands, &c., extra-parochial places and other places not rated to the relief of the poor, shall contribute to the rate for the county, &c., in the same manner as parishes rated to the poor; and the justices may appoint proper persons within such extra-parochial or other places [or within such county, &c. 1 & 2 *G.* 4, *c.* 85, *s.* 2], for assessing and rating the same, and levying, collecting and paying over such rates. 56 *G.* 3, *c.* 49, *s.* 1.

See also stat. 8 & 9 Vict. c. 111, s. 5, *ante*, p. 396.

Boundaries of counties, &c., when and how ascertained.] If

there be any doubt as to the boundary between one county, riding, or other place of distinct and separate jurisdiction, and another, the justices at their respective quarter sessions may appoint two justices for each county to meet and determine the same, as far as relates to the jurisdiction of justices with respect to the county-rate. 56 *G.* 3, *c.* 49, *ss.* 2, 3, 4, 6.

3. *Rate, how levied and paid over.*

Precepts to the high constables.] By stat. 12 G. 2, c. 29, s. 2, the high constables are required to demand from the churchwardens and overseers of the parishes, &c. within their respective hundreds, the sum assessed upon such parishes, &c. which demand is to be made at such times as the justices in their sessions shall by their order direct. This is done by a precept, under the hands and seals of the chairman and one of the other justices.

If there be any parish or place over which the high constables have no jurisdiction, the precept may be directed to the petty constables. 57 *G.* 3, *c.* 94, *s.* 5. *See also* 55 *G.* 3, *c.* 51, *s.* 19, *post*, p. 352.

Hereafter, however, so soon as a vacancy occurs in the office of high constable of any hundred, the justices at quarter sessions shall order precepts to be issued and sent by post or otherwise to the guardians of the unions in which parishes contributable to the county rate are situate, stating the sum assessed on such parish, and requiring the guardians to cause the same to be paid to the treasurer of the county, out of the money held by them on behalf of such parish; and the guardians shall thereupon raise the sum required, in the same manner they now do the money for the relief of the poor. 7 & 8 *Vict. c.* 33, *s.* 1. And if the guardians do not pay the rate for any parish within the limited time, the justices at quarter sessions may then issue their warrants to the overseers of the poor or constables, empowered to levy the county rate, to collect and pay to the treasurer of the county, within a certain time, the rate charged on the parish, together with 1*s.* in every ten in addition thereto. *Id. s.* 2. And if such overseer or constable fail to do so, any justice of the peace for the county may by his warrant cause the same to be levied on the goods of the offender by distress. *Id. s.* 3. As to parishes not in unions, and not under guardians, the justices are to issue their warrants in the first instance to the overseers. *Id. s.* 5.

Warrants from the high constable.] The high constable, upon receipt of the above precept, makes out his warrants to the churchwardens of the respective parishes, &c. within his district, requiring them to pay their respective portion of the

rate; 12 *G.* 2, *c.* 29, *s.* 2; or in places having no poor rate, (*Id. s.* 3,) or in towns and places in the counties of York, Derby, Durham, Lancaster, Chester, Westmoreland, Cumberland or Northumberland, if so directed by the sessions, (*Id. s.* 4,) they may direct their warrants to the petty constables, requiring them to make a rate for and levy the amount of the sums respectively assessed upon them. And where such parish or place happens to be partly in one county, partly in another, the churchwardens, overseers and constables must obey such warrant, although they happen to reside within that part of the parish, &c. which is not within the county for which the rate is made. 1 & 2 *G.* 4. *c.* 85, *s.* 1.

The justices of the peace of any county, in general or quarter sessions, may order such allowances and compensations to be made to the overseers, churchwardens, constables, assessors, collectors, clerks, or other persons employed in the execution of this Act, (which have not hereinbefore been provided for,) out of the monies assessed, levied, and collected by the county rate. 55 *G.* 3, *c.* 51, *s.* 16.

When paid out of poor rate, when not.] The churchwardens and overseers of the poor of every parish and place within the respective counties, cities and liberties in which they respectively lie, shall out of the money to be collected for the relief of the poor, pay to the high constables of the respective hundreds or divisions of the said counties, &c. the sum rated and assessed upon such parish or place, within the space of thirty days after demand thereof made in writing, to be given to or left at the dwelling-house of either of the said churchwardens or overseers, or affixed on any of the church doors of such parish or place to which such officer shall belong, by the said high constables of the respective hundreds or divisions; which demand the high constable shall make at such times as the said justices of the peace shall by their order in sessions direct. 12 *G.* 2, *c.* 29, *s.* 2.

But in case no rate shall be made for the relief of the poor in any parish, township, or place, the justices of the peace in their general or quarter sessions, shall by their order direct the sum of money assessed on such parish, &c., for the purposes of this Act, to be rated and levied on any such parish, &c. by any petty constables or other peace officer of the same, in such manner as money for the relief of the poor is by law to be rated or levied; which sum so rated and levied shall be paid by such petty constable or peace officer to the high constable for the hundred, &c., wherein such parish, &c., shall lie; and shall be demanded of, paid by, or levied on such petty constable or peace officer in the same manner as any rates are hereinbefore directed to be demanded of, paid by, and levied on the churchwardens and overseers of the poor; and if such

petty constable or peace officer shall pay such sum, before it shall be rated and levied as aforesaid, he may afterwards rate and levy the same, or shall be allowed and reimbursed the same out of any constable's or other rate made or to be made on such parish, &c., which the said justices of the peace in sessions shall order. *Id. s.* 3.

And the justices of the peace for the respective ridings, divisions, or counties of York, Derby, Durham, Lancaster, Chester, Westmoreland, Cumberland and Northumberland, at their respective general or quarter sessions, if they shall think convenient, may order the sum directed to be assessed on any town, parish, or place, in the said counties, &c., for any of the purposes of this Act, to be paid by and levied on the petty constable of or for any such town, parish, &c., in such manner as the same is herein directed to be paid and levied in cases where no rate is made for the relief of the poor. *Id. s.* 4.

Also by stat. 55 G. 3, c. 51, s. 13, reciting that it would be inconvenient and oppressive to many townships or places, that the sum of money which may be assessed on them, as or for a county rate under this Act, should be paid out of any rate made for the relief of the poor, where such poor rate doth not apply separately and distinctly to the parish, township, or place: it is enacted that it shall be lawful for the justices of the peace, at their general or quarter sessions, if they shall think convenient, to order the sum of money directed to be assessed as or for the county rate on any such parish, township, or place, whether parochial or otherwise, to be paid and levied on the churchwardens, overseers, or petty constables of or for any such parish, township, or place, in such manner as the same is herein (*in sect.* 3, *supra*) directed to be paid and levied in cases where no rate is made for the relief of the poor.

Distress for it.] By stat. 12 G. 2, c. 29, (as to levying the rate on the old assessments,) after requiring the churchwardens and overseers to pay the county rate, when demanded of them, out of the poor rate, it is enacted by sect. 2, that in case such churchwardens and overseers of the poor, or any of them, shall neglect or refuse to pay the sum of money assessed, after demand made as aforesaid, such high constable shall levy the same by distress and sale of the goods and chattels of such churchwardens and overseers, or either of them, so refusing or neglecting to pay the same as aforesaid, by warrant under the hands and seals of two or more justices of the peace of the county, &c., residing in or near such parish or place, rendering the overplus, if any there shall be, after deducting the money assessed and the charges of the distress and sale, to the owner thereof. *Id.*

So by stat. 55 G. 3, c. 51, (as to making new assessments,) after authorizing the high constables to issue their warrants to the overseers of the poor, &c. requiring them to levy, collect,

and pay the county rate, as mentioned *ante*, p. 404, it is enacted by sect. 12, that in case any overseer or overseers of the poor, or other person appointed to act as such aforesaid, shall neglect, make default, or refuse to pay the same, within the time to be specified and limited for that purpose as aforesaid, to the high constable of the division within which such overseer, &c., shall reside or be appointed to act, any justice of the peace of the said county, upon complaint thereof by any such high constable, by warrant under the hand and seal of any such justice, may levy the same by distress and sale of the offender's goods; and the overseers of the poor of any parish, township, or place, whether parochial or otherwise, or other persons appointed to act as such overseers, shall and may levy and raise, by an equal rate or assessment upon all and every the several estates and property rateable to the relief of the poor, within their respective parishes, townships, or places, whether parochial or otherwise, such sum and sums of money as shall be required and necessary, in order to raise the several sums assessed upon such parishes, townships, or places respectively, or to reimburse such overseers, or other persons as aforesaid, such sums of money as they shall respectively have paid on account of the same; such rate or assessment to be paid by the occupier or occupiers for the time being of such estates and rateable property as aforesaid.

And the distress may be made, not only in the place for which the assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the same county, oath being made thereof before some justice of another county, &c., and certified by him on such warrant, the warrant may be executed in such other county, &c. 1 & 2 *G.* 4, *c.* 85, *s.* 3.

Any person finding himself aggrieved by such distress, may appeal to the next general or quarter sessions of the county, &c. where such assessment was made. *Id.*

See also stat. 7 & 8 Vict. c. 33, s. 3, *ante*, p. 404.

High constables to pay over the rate, and to account, &c.] The respective high constables, at or before the next general or quarter sessions after they have received such sums of money, shall pay the same into the hands of such person as the said justices at their quarter sessions shall appoint to be the treasurer, such treasurer first giving security, to be accountable for the sums paid to him in pursuance of this Act. 12 *G.* 2, *c.* 29, *s.* 6.

And by sect. 8, the high constable shall demand and levy such rates and assessments in manner before directed, and shall account for the same before the justices at their general or quarter sessions; and in case any high constable shall neglect or refuse so to demand, levy, or account, then the said

justices at their respective general or quarter sessions, may commit such high constable to the common gaol of the county, riding, division, city, town corporate, liberty, or place, there to remain without bail or mainprize until he or they shall have caused such rates to be demanded and levied, and shall have rendered a true account in the manner aforesaid; and in case it shall appear by such account that any sum of money is remaining in his hands, which ought to have been paid to the treasurer, to be applied to the purposes aforesaid, and if he shall neglect or refuse to pay the same to the treasurer, or otherwise, if thereunto required by order of the said justices at their general or quarter sessions, then the said justices, at such sessions, may commit such high constable to the common gaol of the county, &c., there to remain without bail or mainprize until he shall have made full payment of the sum that shall appear to be due on such account; and all the accounts and vouchers shall, after having been passed, be deposited with the clerk of the peace respectively, or the town clerk. *Id. s.* 8.

And the justices of the peace at their respective general or quarter sessions may, by their order, oblige the high and petty constables, or any other persons who are empowered to levy, collect, or receive any sum of money by virtue of and for the purposes aforesaid, and who have any sums of money in their hands, to account with them at their general or quarter sessions, in such manner as high constables are directed to account by virtue of this Act; and in case such high or petty constables, or other person, shall refuse to account or to pay over the money that shall remain in their hands, when thereunto required by order of the said justices, in their general or quarter sessions, in either of the said cases the said justices shall have the like remedy against them, as they have against the high constables by virtue of this Act, for not accounting for or paying over the money remaining in their hands. *Id. s.* 17.

Also, the justices of the peace of the said several counties may demand and take, whenever they shall think fit, good and sufficient security, to be approved of by the said justices in general or quarter sessions, from the high constables employed in the collecting and levying the rates; and that if any such high constable, upon being so called upon by the said justices, shall neglect or refuse to give such security, the said justices in quarter sessions may order and direct the churchwardens and overseers of the poor, &c., to pay the quota which shall be assessed upon their parish, &c., towards the county rate, to the treasurer of the county, &c. 55 *G.* 3, *c.* 51, *s.* 19. *See Re Lodge*, 2 *Ad.* & *E.* 123.

4. *Business at Sessions, relating to the County Rate.*

All business appertaining to the assessment, application or

management of the county stock or rate, or any fund or funds used or applied in aid thereof or contributing thereto, or to any matter or thing whereby or in respect whereof the said county stock or rate is or may be chargeable by law, which by any statute or statutes now in force, the justices of the peace are authorized and directed to do and transact at the general or quarter sessions or any adjournment thereof,—shall be done and transacted publicly and in open court at such general or quarter sessions or adjournment thereof, and not otherwise; and that no order of such justices relating to the matters aforesaid, shall be binding or effectual, unless the said order shall have been made, and the business relating thereto shall have been done and transacted publicly and in open court as aforesaid. 4 & 5 *W.* 4, *c.* 48, *s.* 1. But although the business is to be done thus publicly, no ratepayer or other person, other than a member of the court, is entitled in any way to interfere with the jurisdiction of the justices, or to take any part in the proceedings. *R.* v. *JJ. of Nottingham,* 5 *Nev.* & *M.* 160.

Also, public notice shall be given, in two newspapers generally circulating in the county, of the time of holding the general quarter sessions or any adjournment thereof, at least two weeks before the holding of the same, and also of the day and hour at which the business relating to the assessment, application or management of the county stock or rate, will commence at such sessions. 4 & 5 *W.* 4, *c.* 48, *s.* 2.

5. *Appeal against the Rate.*

In case the churchwardens and overseers of any parish or place shall at any time have reason to believe the said parish or place is over-rated, such churchwardens and overseers may appeal to the justices at their next general or quarter sessions against such part of the rate only as may affect the parishes or places in which they serve such offices; but upon such appeal such rate shall not be quashed or destroyed in regard to any other parishes or places assessed thereby. 12 *G.* 2, *c.* 29, *s.* 12.

And by stat. 55 G. 3, c. 51, s. 14, parishes, &c. aggrieved, may appeal to any general or quarter sessions against such part of the rate as relates to them. *See Arch. Sess. Pr.* 365, &c.

Fourteen days' notice of appeal must be given "to the parties against whose rate the appeal is to be made, the clerk of the peace of the county, and the hundred constable." 57 *Geo* 3, *c.* 94, *s.* 2.

Also, notwithstanding the appeal, the rate shall be paid and may be levied, until the sessions shall have decided the appeal; and if upon the hearing of the appeal, the sessions shall order

the rate to be set aside, decreased or lowered, and it appear that any parish, &c. have paid any sum in consequence of such rate, which ought not to have been paid, the court shall order so much thereof as was paid after notice of appeal, to be repaid out of the county rate. *Id.*

As to the costs of appeal: they shall be borne and paid by such respective parishes, townships, places and persons, or such of them, and in such proportions, as the court shall award and order. *Id. s.* 4.

And lastly, by stat. 12 G. 2, c. 29, s. 21, no writ of certiorari to remove any rates made in pursuance of this Act, or to remove any orders or other proceedings taken or made by the said general or quarter sessions touching such rates, shall be taken out or granted, but upon the motion to be made in the first week of the next term after the time for appealing from such rates or orders is expired, and upon making it appear to the court, by affidavit or otherwise, that the merits of the question upon such appeal or orders will, by such removal, come properly in the judgment of the said court; and that no such writ of certiorari shall be allowed, until sufficient security be given to the treasurer appointed by virtue of this Act, in the sum of one hundred pounds, to prosecute such writ of certiorari with effect, and to pay the costs to be ascertained by the court to which such rates, orders, or proceedings shall be removed, in case such rates or orders shall be confirmed; nor shall any such rates, orders, or proceedings be quashed or vacated for want of form only; and all charges attending such removal shall be defrayed out of that or any subsequent rate.

6. *Borough Rate.*

For what purposes.] The borough fund of all boroughs included in the Corporation Act (5 & 6 *W.* 4, *c.* 76,) shall, by sect. 92, be applied in the first instance to the payment of any debts owing by the corporation previous to the 9th September, 1835, or so much thereof as the council of the borough shall think it expedient from time to time to redeem, and interest; and then, to pay:

The salaries of the mayor, recorder, and police magistrate.

The salaries of the town-clerk, treasurer, and of every other officer whom the council shall appoint.

Expenses of printing burgess lists, ward lists, and notices, and of other matters relating to elections.

Expenses of prosecuting, maintaining, and punishing offenders.

Expense of maintaining the borough gaol and house of correction.

Expense of maintaining the other corporate buildings.

Payment of the constables.

All other expenses necessarily incurred in carrying into effect the provisions of the Corporation Act. *See R.* v. *Mayor, &c. of Leeds*, 4 *Q. B.* 796. *R.* v. *Thompson*, 5 *Id.* 477.

In what cases, and how made.] The annual proceeds of all the corporate property of such borough, and all fines and penalties for offences against the Corporation Act, shall be paid to the treasurer of the borough, and by him be carried to the account of the borough fund: and if that fund be not sufficient for the purposes aforesaid, the council of the borough shall from time to time "estimate, as correctly as may be, what amount, in addition to such fund, will be sufficient for the payment of the expenses to be incurred in carrying into effect the provisions of this Act; and in order to raise the amount so estimated, the said council is hereby authorized and required from time to time to order a borough rate in the nature of a county rate to be made within their borough," and for that purpose the council of such borough shall have within their borough all the powers which justices of the peace at their general or quarter sessions in any county have by virtue of stat. 55 G. 3, c. 51 (*see ante*, p. 395, &c.), or as near thereto as the nature of the case will admit; and all warrants by the said Act required to be issued under the hands and seals of two or more justices, shall in like case be signed by the mayor, and sealed with the seal of the borough. 5 & 6 *W.* 4, *c.* 76, *s.* 92. The same section also provides for the cases in which a separate watch-rate may be levied.

The stat. 5 & 6 W. 4, c. 76, s. 92, also, gives an appeal against the rate, in the same manner as against the county rate. *See R.* v. *Recorder of Stamford*, 8 *Law J.* 49, *m.* *R.* v. *JJ. of Ripon*, 7 *Ad.* & *El.* 417. *R.* v. *Recorder of Carmarthen*, 7 *Ad.* & *El.* 756. *R.* v. *Recorder of Poole*, 1 *Nev.* & *P.* 756. But an individual rate-payer cannot appeal; the appeal must be by the parish-officers of some parish, &c. rated. *R.* v. *Recorder of Bath*, 8 *Law J.* 96, *m.*, 9 *Ad.* & *El.* 871.

How levied, &c.] In all cases where a borough-rate or watch-rate may be made and levied in any borough, the council of such borough may order the churchwardens and overseers of every parish or place within which such rate may be levied, or such other persons as by law may make a poor-rate for any such parish or place within the limits of such borough, to pay the amount of such part and portion of such rate, for which such parish or place respectively shall be liable, out of the poor-rate made and collected or to be made or collected for such parish or place; or the said council, instead of ordering such churchwardens and overseers or other persons to pay the same out of the poor-rate, may order them to make and col-

lect a certain pound-rate upon and from the occupiers or possessors of all rateable property within such parish or place, for the amount of the rate for which such parish or place may be liable as aforesaid; and if such churchwardens, overseers, and other persons, upon being so ordered to pay such rate out of the poor-rate, or to make and collect a pound-rate as aforesaid, shall refuse or neglect to do so, the amount thereof may be made and levied of the goods of them or any of them by distress, by virtue of a warrant in that behalf under the hand and seal of the mayor of such borough, or of any two justices of the peace in and for the same; or if any person liable to pay such pound-rate shall neglect or refuse to pay the same, the amount thereof may be levied upon his goods by distress in like manner. 1 *Vict. c.* 81, *s.* 1. *See R.* v. *Recorder of Ipswich*, 8 *Dowl.* 103.

How, where part of a parish only is in the borough.] By stat. 8 & 9 Vict. c. 110, s. 1, where "any parish or place, liable to support its own poor, or any extra-parochial place, shall lie partly within and partly without any such borough, and the council of such borough hath appointed or hereafter shall appoint one or more persons to act as overseer or overseers within that part of such parish or place, or those parts of such parishes or places, which is or are within the same borough, for making, levying, and collecting borough-rates or watch-rates made or hereafter to be made therein, the person or persons so appointed shall be empowered to levy and raise, by an equal rate or assessment upon all the property within each of the parts of parishes or places respectively for which he or they shall be so appointed, which, if such part were a parish maintaining its own poor, would be rateable to the relief of the poor, such sums of money as shall be required in order to raise the several sums assessed upon such parts of parishes or places respectively, or to reimburse such person or persons as aforesaid such sums of money as he or they shall have paid for any borough-rate or watch-rate made or hereafter to be made by the council of the borough wherein such part of a parish or place, or parts of parishes and places, respectively, shall be situated; such rate or assessment, or respective rates or assessments, to be paid by the occupier or occupiers for the time being of such rateable property as aforesaid; and that the person or persons so appointed or to be appointed to act as such overseer or overseers for the purposes aforesaid shall have and exercise, in and for the purpose of making, levying, and collecting every such rate or assessment as aforesaid, all the powers which by the laws now or hereafter to be in force overseers of the poor have or may have for making, assessing, collecting, and recovering rates for the relief of the poor within their several parishes; and every such rate or assessment made

or to be made by any person or persons appointed or to be appointed to act as overseer or overseers of the part of any parish or place within any such borough shall, for the purposes of this Act, be called a district-rate." *See R.* v. *Mayor, &c. of New Windsor*, 13 *Law J.* 337, *qb.* *Fernley* v. *Worthington*, 1 *Man. & Gr.* 491.

And "in every case in which a part only of any parish or place liable to maintain its own poor, and situated within any borough, shall be liable to watch-rate, the overseers of the poor of such parish or place shall not pay the amount of any watch-rate charged by the council of such borough upon such parish or place out of money collected from any rate or rates for the relief of the poor, but shall make a separate rate or assessment upon the part or parts only of such parish or place liable to watch-rates for raising and paying the same watch-rate, which rate shall be made in like manner, and under like regulations, and with like means and remedies for recovery thereof, as are herein contained in relation to district-rates." *Id. s.* 6.

And "whenever there shall be within any borough two or more parishes or places, each separately maintaining its own poor, or two or more extra-parochial places, and each of them partly within and partly without the limits and jurisdiction of such borough, it shall be lawful for the council of such borough to appoint some one person or some two persons to act as overseer or overseers, for making, levying, and assessing district rates and watch-rates within any two or more of the parts of parishes or places, or within all the parts of parishes or places, lying within the limits and jurisdiction of such borough, without regard to the residence of the person or persons so to be appointed; and every person appointed to act as an overseer for the making, levying, and collecting district or watch-rates under the provisions of this Act, and the Acts herein recited, shall be allowed and paid out of the borough fund such allowances or remuneration for his services as the council shall direct." *Id. s.* 8.

And "every such district-rate as aforesaid, made for the purpose of raising money to pay or reimburse any borough-rate or watch-rate charged by the council of the borough upon such part of a parish or place, and every separate rate to be made by overseers of the poor for raising a watch-rate as herein mentioned, may be at such amount or rate in the pound as may be necessary for raising the sum or respective sums so charged by such council, so that no such district-rate, or rate for raising a watch-rate, exceed two-pence in the pound of the annual value of property rateable thereunto, beyond the rate in the pound at which the council of the same borough shall have computed the general borough-rate or watch-rate so laid or charged by them; and that the person or persons col-

lecting such district-rate shall be liable to account as an officer appointed by the council of the borough in or for any part of which he shall act, and shall be liable to the same penalties, remedies, and proceedings in all respects, for refusing or neglecting to account and pay over the monies from time to time remaining in his hands, to which other officers appointed by the council are liable; and in case of there being a surplus in the hands of such person or persons arising from any district-rate, above the amount for raising which such district-rate was made, then such surplus shall be paid to the treasurer of the borough fund, to the credit of the place within and for which such district-rate was made, and go in part of the next rate of the like denomination to be made and laid on such place by the council of such borough: and in regard to separate rates made by overseers of the poor for raising watch-rates as is herein mentioned, such overseers shall account for the money collected under or by virtue of such separate rates, in like manner as for money collected under rates made for the relief of the poor; and in case of there being a surplus in the hands of such overseer, arising from any such separate rate made for raising a watch-rate, above the amount to raise which such separate rate was made, then such surplus shall be paid to the treasurer of the borough fund, to the credit of the place within and for which such separate rate was made, and go in part of the next watch-rate to be made and laid on such place by the council of such borough." *Id. s.* 4.

But "no such district-rate, nor any separate rate made by overseers of the poor for raising a watch-rate as herein is mentioned, shall be demanded, collected, or payable, until the same shall have been allowed by two or more justices of the peace usually acting in and for such borough, and shall also have been published in like manner as rates for relief of the poor are by law required to be allowed and published." *Id. s.* 2.

And the persons appointed or to be appointed to act as overseers for making, levying, and collecting borough-rates and watch-rates in the parts of parishes or places situate within the limits and jurisdiction of any city or borough as aforesaid, or any of them, and for the overseers of the poor making any separate rate or assessment for the purpose of raising the amount of any watch-rate, by warrant from any two justices of the peace usually acting in and for the borough wherein the parishes, parts of parishes or places, in or for which any district-rate, or rate for raising a watch-rate, may be made, shall be situated,—to levy upon every person who shall refuse to pay the amount assessed or charged upon him or her by any such district-rate, or rate for raising a watch-rate, according as they shall be assessed, the amount so assessed or charged upon him, her, or them, together with the

or to be made by any person or persons appointed or to be appointed to act as overseer or overseers of the part of any parish or place within any such borough shall, for the purposes of this Act, be called a district-rate." *See R.* v. *Mayor, &c. of New Windsor*, 13 *Law J.* 337, *qb.* *Fernley* v. *Worthington*, 1 *Man. & Gr.* 491.

And "in every case in which a part only of any parish or place liable to maintain its own poor, and situated within any borough, shall be liable to watch-rate, the overseers of the poor of such parish or place shall not pay the amount of any watch-rate charged by the council of such borough upon such parish or place out of money collected from any rate or rates for the relief of the poor, but shall make a separate rate or assessment upon the part or parts only of such parish or place liable to watch-rates for raising and paying the same watch-rate, which rate shall be made in like manner, and under like regulations, and with like means and remedies for recovery thereof, as are herein contained in relation to district-rates." *Id. s.* 6.

And "whenever there shall be within any borough two or more parishes or places, each separately maintaining its own poor, or two or more extra-parochial places, and each of them partly within and partly without the limits and jurisdiction of such borough, it shall be lawful for the council of such borough to appoint some one person or some two persons to act as overseer or overseers, for making, levying, and assessing district rates and watch-rates within any two or more of the parts of parishes or places, or within all the parts of parishes or places, lying within the limits and jurisdiction of such borough, without regard to the residence of the person or persons so to be appointed; and every person appointed to act as an overseer for the making, levying, and collecting district or watch-rates under the provisions of this Act, and the Acts herein recited, shall be allowed and paid out of the borough fund such allowances or remuneration for his services as the council shall direct." *Id. s.* 8.

And "every such district-rate as aforesaid, made for the purpose of raising money to pay or reimburse any borough-rate or watch-rate charged by the council of the borough upon such part of a parish or place, and every separate rate to be made by overseers of the poor for raising a watch-rate as herein mentioned, may be at such amount or rate in the pound as may be necessary for raising the sum or respective sums so charged by such council, so that no such district-rate, or rate for raising a watch-rate, exceed two-pence in the pound of the annual value of property rateable thereunto, beyond the rate in the pound at which the council of the same borough shall have computed the general borough-rate or watch-rate so laid or charged by them; and that the person or persons col-

CUSTOS ROTULORUM.

See "Justices."

CUTLERS.

See "Manufactures."

DEAD BODIES.

1. *Burial of dead bodies cast on shore.*
2. *Disinterment or sale of dead bodies.* p. 418.

1. *Burial of Dead Bodies cast on Shore.*

Notice to the overseer, &c.] If any person shall find a dead body or bodies cast on shore from the sea by wreck or otherwise, he shall within six hours give notice thereof to one of the churchwardens or overseers of the parish where the body shall be found or (if it be found in an extra-parochial place) to the constable or headborough, or cause such notice to be left at his last place of abode: if he do this, he shall have a reward of 5*s.* (48 G. 3, *c.* 75, *s.* 3), to be paid to him by such churchwarden, &c.; *Id. s.* 5; or if he do not, he shall forfeit 5*l.* *Id. s.* 4.

To convict for this offence, the prosecutor must prove—

1. That the defendant found a dead body cast on shore from the sea, within the parish.

2. That he did not, within six hours afterwards, give notice thereof to one of the churchwardens or overseers of the poor of the parish, either personally, or by leaving it for him at his last place of abode.

The conviction may be thus:

Berkshire, to wit: Be it remembered, that on this —— day of ——, in the —— year of the reign of Her Majesty Queen Victoria, A. B. is convicted before me, E. F., one of Her Majesty's justices of the peace in and for the said [*county*],* *for that he the said A. B. on —— at ——, found a certain dead body of a man unknown, cast on shore from the sea, in the parish of —— aforesaid,* [*or in —— aforesaid, the same being an extra-parochial place*], *and did not, within six hours after he so found the same as aforesaid, give notice thereof to any of the churchwardens or overseers of the said parish* [or *to the constable or headborough of the said*

costs and charges of recovering and enforcing payment of the same, to be ascertained by such justices,—by distress and sale of the offender's goods, rendering to the parties the overplus; and in default of such distress it shall be lawful for any two such justices of the peace to commit him or them to the common gaol of or used for the same borough, there to remain, without bail or mainprize, until payment of the said amount and arrearages." *Id. s.* 7.

But "the council of the borough, in which any district-rate, or any separate rate to be made by overseers of the poor for raising a watch-rate as herein mentioned, shall be made, or for any committee of the council appointed for that purpose,—on application by or on behalf of any person rated in any such district-rate, or rate for raising a watch-rate, to be discharged therefrom, and on proof of his or her inability, through poverty, to pay the amount charged upon him or her by such district-rate, or rate for raising a watch-rate,—to order that such person shall be excused from the payment of such district-rate, or rate for raising a watch-rate, and to strike out his or her name therefrom; and the sum at which such person was so rated in such district-rate, or rate for raising a watch-rate, shall not thereafter be collected, nor shall any person be charged therewith, or in any manner called or liable to account for the same, or for omitting to collect or receive the same." *Id. s.* 5.

"Any person who shall think himself aggrieved by any such district-rate as aforesaid, or by any separate rate to be made by any overseers of the poor for raising a watch-rate as herein is mentioned, may appeal to the recorder of the borough in which such rate has been made, at the next quarter session for the same borough, or, in case there shall be no recorder in such borough, to the justices at the next court of quarter sessions for the county within which such borough is situated, or whereunto it is adjacent; and such recorder or justices respectively shall hear and determine the same, and shall award relief in the premises as in the case of an appeal against any rate made for the relief of the poor. *Id. s.* 3.

CRUELTY TO ANIMALS.

See "Cattle."

CURSING.

See "Swearing."

where a pauper, chargeable to the parish of St. George, Hanover-square, was admitted an in-patient in St. George's hospital, and died there: the court refused a mandamus, commanding the overseers of the poor of St. George's parish to remove and bury the body, holding that there was no law obliging overseers to do so. *R.* v. *Stennett et al.*, 10 *Law J.* 40 *m.*

Proceedings for penalties.] The conviction may be by one justice. *See sect.* 9. If the penalty be not paid on conviction, it may be levied by distress and sale of the offender's goods, and paid to the informer; or if there be no sufficient distress, the offender may be committed to the common gaol or house of correction for not more than two calendar months, nor less than fourteen days, unless the penalty and all reasonable charges attending the recovery thereof be sooner paid. *Id. s.* 8.

Any person feeling himself aggrieved by such conviction, may appeal to the next general or quarter sessions, after a month, giving ten days' notice of appeal, and of the matter thereof, to the persons appealed against, and forthwith after such notice entering into a recognizance before some justice of the county, &c., with sufficient sureties, conditioned to try such appeal, and abide the order and award of the said court thereon: the justices at sessions may award costs to either party, and they may, if they see cause, mitigate the penalty, and may also order such further satisfaction to the party injured as they shall adjudge reasonable. *Id. s.* 10.

Expenses, how paid.] All necessary expenses incurred in the execution of this Act, shall be paid in the first instance by the churchwardens or overseers, or constable or headborough, of the parish or place; *Id. s.* 5; who shall be afterwards reimbursed by an order of any one justice of the peace upon the treasurer of the county, &c., *Id. s.* 6, to be paid out of the county rate. *Id. s.* 14.

Disinterment, or Sale of Dead Bodies.

In what cases punishable.] Disinterring a dead body, even for the purpose of dissection, is a misdemeanor at common law, and punishable with fine or imprisonment, or both. *R.* v. *Lynn*, 2 *T. R.* 733. *R.* v. *Gillies*, *R.* & *Ry.* 366, *n.* So the sale of a dead body, even for the purpose of dissection, was formerly a misdemeanor, and punishable in like manner; *see R.* v. *Cundick*, *Dowl.* & *Ry. N. P. C.* 13; and is so still, where it is not authorized by stat. 2 & 3 W. 4, c. 75, which shall presently be noticed.

Commitment:—*On* —— *at* —— *unlawfully did disinter and dig up the dead body of a man* [*unknown* or *formerly called and*

known by the name of C. D.], then and there buried. And you the said keeper, &c.

Dead bodies for dissection.] By stat. 2 & 3 W. 4, c. 75, certain provisions are made for regulating schools of anatomy. The secretary of state for the home department may grant a licence to practise anatomy, to any fellow or member of the college of physicians or surgeons; to any graduate or licentiate in medicine; to any person lawfully qualified to practise medicine; to any professor or teacher of anatomy, medicine, or surgery, or to any student attending a school of anatomy,—on an application, countersigned by two justices of the peace for the county, &c. in which the party resides, "certifying that to their knowledge or belief such party so applying is about to carry on the practice of anatomy." *Id. s.* 1. Inspectors are appointed to inspect the places where anatomy is practised, and to make returns of the dead bodies removed for the purpose of anatomical examination. *Id. ss.* 5, 4.

Any executor or other party having lawful possession of the body of any deceased person, and not being an undertaker or other party intrusted with the body for the purpose only of interment, may permit the body of such deceased person to undergo anatomical examination, unless, to the knowledge of such executor or other party, such person shall have expressed his desire, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, that his body after death might not undergo such examination, or unless the surviving husband or wife, or any known relative of the deceased person, shall require the body to be interred without such examination. *Id. s.* 7.

And if any person, either in writing at any time during his life, or verbally in the presence of two or more witnesses during the illness whereof he died, shall direct that his body after death be examined anatomically, or shall nominate any party by this Act authorized to examine bodies anatomically to make such examination, and if, before the burial of the body of such person, such direction or nomination shall be made known to the party having lawful possession of the dead body, then such last-mentioned party shall direct such examination to be made, and in case of any such nomination as aforesaid, shall request and permit any party so authorized and nominated as aforesaid to make such examination, unless the deceased person's surviving husband or wife, or nearest known relative, or any one or more of such person's nearest known relatives, being of kin in the same degree, shall require the body to be interred without such examination. *Id. s.* 8.

The body, however, shall not be removed until after 48 hours from the decease, nor until 24 hours' notice to the

inspector of the district, nor unless a certificate stating in what manner such person came by his death shall previously have been signed by the physician, surgeon, or apothecary, who attended such person during the illness whereof he died, or who shall be called in after death to view the body, but who shall not be concerned in examining the body after removal; such certificate to be delivered, with the body, to the party receiving the same for anatomical examination. *Id. s.* 9. The body shall be removed in a shell or coffin; *Id. s.* 13; and any person licensed under this Act may lawfully receive it, and is not punishable for having it in his possession; *Id. s.* 10, 14; and within 24 hours afterwards he shall lodge with the inspector of the district the certificate he received with the body. *Id. s.* 11. After the body has undergone anatomical examination, it shall be decently buried. *Id. s.* 13.

Any person offending against the provisions of this Act, shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment not exceeding three months, or fine not exceeding 50*l.* *Id. s.* 18.

DEED.

See "Forgery," "Larceny."

DEER.

See "Larceny."

DEFECTS AIDED.

What defects shall not vitiate.] "That the punishment of offenders may be less frequently interrupted in consequence of technical niceties, be it enacted, that no judgment upon any indictment or information for any felony or misdemeanor, whether after verdict or outlawry, or by confession, default or otherwise, shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, or for the omission of the words '*as appears by the record*,' or the words '*with force and arms*,' or the words '*against the peace*,' nor for the insertion of the words '*against the form of the statute*,' instead of the words '*against the form of the statutes*,' or *vice versâ*; nor for that any person or persons mentioned in the indictment or information is or are designated by a name of office

or other descriptive appellation, instead of his, her, or their proper name or names; nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence; nor for stating the time imperfectly; nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or exhibiting the information, or on an impossible day, or on a day that never happened; nor for want of a proper or perfect venue, where the court shall appear by the indictment or information to have had jurisdiction over the offence." 7 *G.* 4, *c.* 64, *s.* 20. *See R.* v. *O'Connor et al.*, 13 *Law J.* 33 *m.*, 5 *Q. B.* 16.

What defects aided by verdict.] "No judgment after verdict upon any indictment or information for any felony or misdemeanor, shall be stayed or reversed for want of a similiter; nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion; nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors; nor because any person has served upon the jury, who has not been returned as a juror by the sheriff or other officer; and that where the offence charged has been created by any statute or subject to a greater degree of punishment by any statute, the indictment or information shall after verdict be held sufficient, if it describe the offence in the words of the statute." *Id. s.* 21. *See R.* v. *Martin et ux.*, 8 *Ad.* & *El.* 481.

DEMURRER.

A demurrer is a pleading, by which the legality of the last preceding pleading is denied and put in issue, and the issue is then determined by the court. In criminal cases, it is only in proceedings by indictment or information that a demurrer can be pleaded, that is to say, either to the indictment or information itself, or to the plea or subsequent pleading. But in practice, it very seldom occurs. A defendant seldom demurs to an indictment, except for defects which would be cured by verdict by stat. 7 G. 4, c. 64, *supra*; because in general he may have the same advantages by a motion in arrest of judgment, after he has been convicted by verdict. And demurrers to other pleadings occur still more seldom, as special pleadings scarcely ever occur in practice, except in prosecutions for non-repair of highways or bridges.

A demurrer in criminal cases has the effect of opening the whole record to the court; and therefore upon arguing it, a

defendant may take objections, as well to the jurisdiction of the court where the indictment was found, as to the subject matter of the indictment itself. *R.* v. *Fearnley*, 1 *T. R.* 316.

In misdemeanors, the judgment upon demurrer is final, and not merely that the party shall answer over. *Per Lawrence, J., in R.* v. *Gibson*, 8 *East*, 112. But in felonies, the defendant is not concluded by the judgment on demurrer, but if the judgment be against him he may still plead not guilty; and where a defendant in such a case demurs, it is usual for him at the same time to plead over to the felony. *R.* v. *Phelps et al., Car.* & *M.* 180. *R.* v. *Adams et al., Id.* 299, *but see R.* v. *Bowen*, 1 *Car.* & *K.* 501.

DEMANDING MONEY WITH MENACES, &c.

See "Larceny."

DEODAND.

See "Coroner."

DESERTION.

See "Mutiny."

DISORDERLY HOUSE.

What, &c.] It is clearly agreed that keeping a bawdy-house is a common nuisance, as it endangers the public peace, by drawing together dissolute and debauched persons, and has also a tendency to corrupt the manners of both sexes by such an open profession of lewdness. 1 *Hawk. c.* 74, *s.* 1. And a lodger who keeps only a single room for the purpose, is indictable as for keeping a bawdy-house. *Id. s.* 3. Also a feme covert is punishable for this offence, as much as if she were sole. *Id. s.* 2. But the fact of a woman keeping a house for the purpose of her own prostitution merely, it seems, would not be sufficient in law to make the house a disorderly house; it must be a house for the common reception of men and women generally for the purpose of prostitution.

If the house be not a bawdy-house, but be disorderly in other respects, it may equally be the subject of an indictment. And therefore where an indictment for keeping a disorderly house for the purpose of cock-fighting, boxing, &c., was in the ordinary form of an indictment for keeping a bawdy-house, except that instead of "drinking, tippling, whoring," it substituted the words "fighting of cocks, boxing, playing at cudgels:" it was holden to be good, upon motion in arrest of judgment. *R.* v. *Higginson*, 2 *Burr.* 1232.

Any person who shall appear, act, or behave him or herself as master or mistress, or as the person having the care, government, or management of any bawdy-house, gaming-house, or other disorderly house, shall be deemed and taken to be the owner thereof, and shall be liable to be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof. 25 *G.* 2, *c.* 36, *s.* 8.

Keeping a disorderly house is a misdemeanor, punishable with fine or imprisonment (with or without hard labour, 3 *G.* 4, c. 114), or both.

Prosecution.] By stat. 25 G. 2, c. 36, s. 5, in order to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses, it is enacted that if any two inhabitants of any parish or place paying scot or bearing lot therein, give notice to any constable (or other peace officer of the like nature, where there is no constable) of such parish or place, of any person keeping a bawdy-house, gaming-house, or any other disorderly house in such parish or place, such constable or other officer shall forthwith go with such inhabitants to a justice of the peace of the county, &c. in which such parish lies, and shall (upon such inhabitants making oath before such justices that they believe the contents of such notice to be true, and entering into recognizance in the penal sum of 20*l.* each, to give or produce material evidence against such person for such offence) enter into a recognizance in the penal sum of 30*l.*, to prosecute with effect such person for such offence at the next general or quarter sessions of the peace, or at the next assizes to be holden for the county in which such parish or place lies, as to the said justice shall seem meet; and such constable or other officer shall be allowed all the reasonable expenses of such prosecution, to be ascertained by any two justices of the peace of the county, &c., where the offence shall be committed, and shall be paid the same by the overseers of the poor of such parish or place; and in case such person shall be convicted of such offence, the overseers of the poor of such parish or place shall forthwith pay the sum of 10*l.* to each of such inhabitants; (*see Clarke* v. *Rice*, 1 *B.* & *A.* 694;) and in case such overseers shall neglect or refuse to

pay to such constable or other officer such expenses of the prosecution as aforesaid, or shall neglect or refuse to pay upon demand the said sums of 10*l.* and 10*l.*, such overseers and each of them shall forfeit to the person entitled to the same double the sum so refused or neglected to be paid. Also a copy of the above notice shall be served on the overseers of the poor of the parish or place, as shall presently be noticed. *See stat.* 58 *G.* 3, *c.* 70, *s.* 7, *infra.*

Upon such constable or other officer entering into such recognizance, the justice shall forthwith make out his warrant to bring the party accused before him, and shall bind him or her over to appear at such general or quarter sessions or assizes, there to answer to such bill of indictment as shall be found against him or her for such offence; and such justice may, if he think fit, demand security for the party's good behaviour in the mean time, and until the indictment shall be found, heard or determined, or the grand jury have ignored the bill. 25 *G.* 2, *c.* 36, *s.* 6.

If the constable neglect or refuse to go before the justice, or to enter into the recognizance, or if he be wilfully negligent in carrying on the said prosecution, he shall forfeit the sum of 20*l.* to each of such inhabitants so giving notice as aforesaid. *Id. s.* 7. Such inhabitants are notwithstanding competent witnesses for the prosecution. *Id. s.* 9.

And by stat. 58 G. 3, c. 70, s. 7, a copy of such notice shall also be served or left at the place of abode of the overseers of the poor of such parish or place, or one of them, and such overseer or overseers shall be summoned or have reasonable notice to attend upon such justice of the peace, before whom such constable shall have notice to attend; and if such overseers or overseer shall then and there enter into such recognizance to prosecute such offender as the constable is required to enter into by stat. 25 G. 2, c. 36, s. 5, then the constable need not enter into such recognizance: but if such overseers or overseer shall neglect to attend such justice, or shall attend and decline to enter into recognizance, then such constable shall enter into the same, and shall prosecute, and be entitled to his expenses, as in and by the said Act is directed.

Commitment.] The offence may be described thus in the commitment:—*For that she the said C. B., on —— at ——, unlawfully did keep and maintain a certain common, ill-governed and disorderly house; and did cause certain persons, as well men as women, of evil name and fame and of dishonest conversation, to frequent and come together in the said house, and there to be and remain drinking, tippling, whoring, and misbehaving themselves. And you the said keeper,* &c.

DISSENTERS.

Their chapels to be certified and registered.] No congregation or assembly for religious worship of Protestants shall be permitted, until the place of meeting be certified to the bishop of the diocese, or to the archdeacon of the archdeaconry, or to the justices of the peace at the general quarter sessions of the county, city, or place; and the registrar or clerk of the peace shall register or record the same, and give a certificate thereof to any person who shall demand the same. 55 *G.* 3, *c.* 155, *s.* 2. 1 *W. & M. c.* 18.

And by stat. 31 G. 3, c. 32, (the Act for the toleration of Roman Catholics,) s. 5, it is provided that no place or congregation or assembly for religious worship shall be allowed, until the place of such meeting shall be certified to the sessions of the county or place where the same shall be held, and be there recorded; and the clerk of the peace shall give a certificate thereof, if demanded.

Preaching in places not certified.] Every person who shall knowingly permit or suffer any congregation or assembly for religious worship of protestants to meet in any place occupied by him, until the same shall have been so certified as aforesaid, shall forfeit for every time such congregation or assembly shall meet contrary to the provisions of this Act, a sum not exceeding 20*l.*, nor less than 20*s.* 55 *G.* 3, *c.* 155, *s.* 2.

Also, every person who shall teach or preach in any congregation or assembly as aforesaid, in any place, without the consent of the occupier thereof, shall forfeit for every such offence any sum not exceeding 30*l.*, nor less than 40*s.* *Id. s.* 3.

Disturbing their congregations.] If any person "do and shall wilfully and maliciously or contemptuously disquiet or disturb any meeting, assembly or congregation of persons assembled for religious worship, permitted or authorized by this Act or any former Act of parliament, or shall in any way disturb, molest or misuse any preacher, teacher or person officiating at such meeting, assembly or congregation, or any person or persons there assembled: such person or persons so offending, upon proof thereof before any justice of the peace by two or more credible witnesses, shall find two sureties, to be bound by recognizances, in the penal sum of 50*l.*, to answer for such offence, and in default of such sureties shall be committed to prison, there to remain until the next general or quarter sessions; and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of 40*l.*" 52 *G.* 3, *c.* 155, *s.* 12. *And see* 1 *W. & M.* c. 18, *s.* 18. A congregation of foreign Lutherans, has been

holden to be within the protection of the Act. *R.* v. *Hube et al.*, 5 *T. R.* 542, *Peake*, 132. And it is no defence to show, that the violence complained of was committed by the defendant in asserting his right to the office of clerk to the chapel, *Id.*, or the like. If two or more be jointly indicted, each is subject to the full penalty. *Id.*

There is a similar provision, as to Roman Catholic congregations, in stat. 31 G. 3, c. 32, s. 10.

Commitment:—*On —— at —— did willingly, and of purpose, maliciously and contemptuously come into a certain congregation of Protestant Dissenters, then and there assembled for the worship of Almighty God, in a certain meeting-house, there situate, then and long before certified, registered and recorded, according to the direction of the statute in that case made and provided, and did then and there wilfully, willingly, and of purpose, maliciously and contemptuously disquiet and disturb the said congregation, the doors of the said meeting-house, where the said congregation were so assembled, not being then locked, barred, or bolted. And you the said keeper, &c.*

DISTRESS.

1. *Fraudulently removing goods, to avoid a distress for rent.*
2. *Costs of a distress*, p. 429.
3. *Distress upon a conviction;—see "Conviction," ante*, p. 376, 379.

1. *Fraudulently removing goods, to avoid a Distress for Rent.*

Landlord's remedy.] "If any tenant, lessee for life or years, at will, sufferance or otherwise, of any messuages, lands, tenements or hereditaments, upon the demise or holding whereof any rents are reserved, due or made payable, shall fraudulently or clandestinely convey away, or carry off or from such premises, his goods and chattels, to prevent the landlord or lessor from ditraining the same for arrears of rent so reserved, due or made payable": the landlord within thirty days may seize them as a distress wherever he shall find them, 11 *G.* 2, *c.* 19, *s.* 1, unless they have been *bonâ fide* sold, *Id. s.* 2, or given to a creditor for a *bonâ fide* debt; *Bach* v. *Meats*, 5 *M.* & *S.* 200; and if it be necessary to break open any door, in order to seize them, the landlord in the day time may do so, first calling to his assistance the constable or other peace officer of the hundred, parish or place where the goods are concealed, and, in the

case of a dwelling-house, oath being first made before a justice of the peace, of a reasonable ground to suspect that such goods are therein. 11 *G.* 2, *c.* 19, *s.* 7. Also the landlord may, in an action of debt, recover from the tenant, or any persons who may have wilfully and knowingly assisted him, double the value of the goods carried off or concealed. *Id. s.* 3.

The statute does not apply to cases, where the removal or concealment is before the rent becomes due, although done evidently for the purpose of defeating the landlord's remedy by distress. *Watson* v. *Main*, 3 *Esp.* 15, *Farneaux* v. *Fotherby*, 4 *Camp.* 136. Nor does it apply to the removal of the goods of a stranger. *Thornton* v. *Adams*, 5 *M.* & *S.* 38. But where the goods or chattels of the tenant are removed off the premises after any rent becomes due and is unpaid, the statute attaches, if the removal were either fraudulent or clandestine. *Opperman* v. *Smith*, 4 *D.* & *R.* 33. What removal is fraudulent or clandestine, is matter of evidence: fraud may be implied, from proof that the goods were removed with the intent of depriving the landlord of his remedy by distress, no sufficient quantity of goods for that purpose being left upon the premises. *See Parry* v. *Duncan*, 7 *Bing.* 243. *John* v. *Jenkins*, 3 *Tyr.* 170.

The statute also extends only to cases where the landlord would be entitled to his remedy by distress at common law, independently of all covenant or stipulation upon the subject: and therefore where a man having a term in lands, parts with the whole of it to a tenant, reserving a rent, he is not within the protection of the statute, although by the deed between them a power of distress be expressly given to him. *See Pluck* v. *Digges*, 2 *Dowl. N. C.* 180.

How, where the goods do not exceed 50*l.*] But where the value of the goods and chattels, so fraudulently or clandestinely carried off or concealed, shall not exceed 50*l.*, the landlord, or his bailiff, servant or agent, may exhibit a complaint in writing, before two justices of the peace of the county, &c., and residing near the place from which such goods were removed or where they were found, (*See R.* v. *Morgan, Cald.* 156,) not being interested in the lands or tenements from which the same were removed; who may summon the parties concerned, examine the fact, and all proper witnesses upon oath, and in a summary way determine whether the party complained of be guilty of the offence, and may in like manner inquire into the value of the goods; and upon full proof of the offence, such justices, by order under their hands and seals, shall adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord, his bailiff, servant or agent, at such time as the said justices shall appoint; and in default of payment, the justices may cause the same to be levied by distress; or for want of distress they may commit

the offender to the house of correction, there to be kept to hard labour for six months, unless the money be sooner paid or satisfied. 11 *G.* 2, *c.* 19, *s.* 4. Where the justices proceeded to adjudicate upon this section, and made an order against the tenant, although it appeared that the title to the premises was disputed, and the tenant had actually paid his rent to one of the claimants: it was holden that they had jurisdiction to do so, and that therefore an action of trespass would not lie against them. *Coster* v. *Wilson et al.*, 3 *Mees. & W.* 411, 1 *Horn & H.* 141. In this case also, the warrant of commitment did not state that there had been a complaint in writing, or that the examination of the witnesses had been upon oath, but it referred to the order, which stated those matters; and the court held it to be sufficient. *Id.*

The complaint in this case may in fact be made to one justice, and he may issue the summons; 3 *G.* 4, *c.* 25, *s.* 2. *See ante*, p. 359; but the case must be heard before two justices, and the order must be made by them. The order may be in the following form:—

Berkshire, to wit: Whereas by a certain complaint in writing exhibited before us, J. P. & R. S. esquires, two of Her Majesty's justices of the peace in and for the said county, residing near the place [*whence the goods and chattels hereinafter mentioned were removed*, or *where the goods and chattels hereinafter mentioned were found*], *and not being interested in the lands and tenements whence such goods and chattels were removed, by G. H., bailiff of J. S. of* ——, *in the said county, A. B. of* ——, *farmer, stands charged for that he the said A. B., on* —— *at* ——, *being then and there tenant from year to year to the said J. S. of a certain messuage and lands there situate, and being then indebted unto the said J. S. for certain arrears of rent reserved and then due and payable for the said messuage and lands, did fraudulently* [*and clandestinely*] *remove, convey away and carry off from the said premises divers of his goods and chattels, not exceeding the value of* £50, *to wit, of the value of* £30, *in order to prevent the said J. S., the landlord of the said premises, from distraining for the said arrears of rent so due and payable as aforesaid, the said A. B. not having then and there left upon the said demised premises sufficient goods whereof the said J. S. could cause the said arrears to be levied; and whereas one C. D. of* —— *labourer, and one E. F. of* —— *yeoman, also stand duly charged before us, for that they the said C. D. & E. F., on the day and year aforesaid, at* —— *in the said county, did wilfully and knowingly aid and assist the said A. B. in so removing, conveying away and carrying off the said goods and chattels* [or *in concealing the said goods and chattels so removed and conveyed away*] *from the premises aforesaid; against the form of the statute in such case made and provided. And the said A. B., C. D. & E. F. being duly summoned to appear before us in this behalf, now ap-*

pear and are present accordingly [or as the fact may be]. *We the said justices, thereupon, having now examined the fact, and all proper witnesses upon oath, do hereby determine that the said A. B. is guilty of the said offence so charged against him as aforesaid, and that the said C. D. & E. F. are also guilty of the offence so charged against them as aforesaid; and we the said justices, having inquired into the value of the goods and chattels so removed, conveyed away and carried off as aforesaid, do find that the value of the same was and is £30: Wherefore we the said justices do hereby order and adjudge the said A. B. C. D. & E. F. to pay unto the said J. S. or to his bailiff, servant or agent, the sum of £60 (being double the value of the said goods and chattels), on or before the —— day of —— instant. Given under our hands and seals, at ——, the —— day of ——, &c.*

See as to this order, *R.* v. *Bissey, Sayer*, 304. It must appear upon the face of it, that the party complaining is the landlord, or his bailiff, servant or agent, and that the party who removed the goods or caused them to be removed was the tenant. *R.* v. *Davis*, 5 *B. & Ad.* 551. It need not, however, enumerate the goods removed. *R.* v. *Rabbits*, 6 *D. & R.* 341. It must also show that a complaint in writing was exhibited before the justices by the landlord or his agent. *Ex p. Fuller*, 13 *Law J.* 141, *m.* 2 *Dowl. & Lo.* 98. Where the order, in charging the parties who were aiding and assisting the tenant in removing the goods, did not allege that they "wilfully and knowingly" did so, it was holden bad on that account. *R.* v. *JJ. of Radnorshire*, 9 *Dowl.* 90.

The party may appeal against this order, to the next general or quarter sessions; 11 *G.* 2, *c.* 19, *s.* 5; and if he enter into recognizance with one or two sureties to appear at the sessions, &c., the order shall not in the mean time be executed. *Id. s.* 6.

2. *Cost of a Distress.*

Where a distress is made for arrears of rent, [or for land tax, assessed taxes, poor's rates, church rates, tithes, highway rates, sewer rates, or any other rates, taxes, impositions or assessments whatsoever, 7 & 8 *G.* 4, *c.* 17,] not exceeding 20*l.*, the person making the distress or person employed by him shall not have, take or receive any other or more costs or charges for or in respect of the same, than those set down in the schedule to the Act, 57 *G.* 3, *c.* 93, *s.* 1, and which are as follow:—

	£	*s.*	*d.*
Levying distress.....	0	3	0
Man in possession, per day	0	2	6
Appraisement, whether by one broker or more, 6*d.* in the pound on the value of the goods.			

	£	s.	d.
All expenses of advertisements, if any such Catalogues, sale and commission, and delivery of goods, 1*s.* in the pound on the net produce of the sale.	0	10	0

"If any person or persons whatsoever, shall in any manner levy, take, or receive from any person or persons whatsoever, or retain or take from the produce of any goods sold for the payment of such rent," [rates, taxes, &c. *vide supra*,] "any other or greater costs and charges than are mentioned and set down in the said schedule, or make any charge whatsoever for any act, matter or thing mentioned in the said schedule and not really done:" the party aggrieved may apply to a justice of the peace for the county, &c. in which the distress was made or proceeded in, for redress: and thereupon such justice shall summon the party complained of, shall examine into the matter of complaint, and hear the defence; and if it appear to him that the matter of complaint is true, he shall order and adjudge treble the amount of the monies so unlawfully taken, to be paid by the party so having acted to the party complaining, together with full costs; and in case of non-payment, the justice may forthwith grant his warrant to levy the same by distress; and if no sufficient distress, he may "commit the party or parties to the common gaol or prison within the limits of the jurisdiction of such justice, there to remain until such order or judgment be satisfied. *Id.* *s.* 2. Or if the justice find the complaint not well founded, he may order the complainant to pay costs, not exceeding twenty shillings. *Id.* No such order however shall be made against the landlord, for whom the distress was made, unless he shall have personally levied such distress. *Id. and see Hart* v. *Leach*, 1 *Mees. & W.* 560.

The justice may summon witnesses, at the instance of either party; and if they do not appear, or refuse to be examined, they shall forfeit not exceeding forty shillings, to be recovered as above mentioned. *Id. s.* 3.

The following forms are given by the statute:

Form of the order in favour of the complainant:—*In the matter of the complaint of A. B. against C. D., for a breach of the provisions of an Act of the fifty-seventh year of his Majesty King George the Third, intituled An Act* [here insert the title of this Act*] *I, E. F., a justice of the peace for the county of —— and acting within the division of ——, do order and adjudge that the said C. D. shall pay to A. B. the sum of ——, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for rent; and the further sum of ——, for costs.*

* "An Act to regulate the cost of distresses levied for payment of small rents."

Form of the order, when the complaint is dismissed: same as the last form, to the words "*do order and adjudge*"—*that the complaint of the said A. B. is unfounded*; [if costs are given;] *and I do further order and adjudge that the said A. B. shall pay unto the said C. D. the sum of —— for costs.*

DOCK.

See "*Larceny.*"

DOGS.

Stealing.] By stat. 8 & 9 Vict. c. 47, s. 2, "if any person shall steal any dog, every such offender shall be deemed guilty of a misdemeanor; and, being convicted thereof before any two or more justices of the peace, shall for the first offence, at the discretion of the said justices, either be committed to the common gaol or house of correction, there to be imprisoned only, or be imprisoned and kept to hard labour, for any term not exceeding six calendar months, or shall forfeit and pay, over and above the value of the said dog, such sum of money, not exceeding twenty pounds, as to the said justices shall seem meet; and if any person so convicted shall afterwards be guilty of the said offence, every such offender shall be guilty of an indictable misdemeanor, and being convicted thereof shall be liable to suffer such punishment, by fine, or imprisonment with or without hard labour, or by both, as the court in its discretion shall award, provided such imprisonment do not exceed eighteen months."

The conviction before two justices, is in the ordinary form, *ante* p. 372; and the offence may therein be described thus:—*That E. F. of ——, on ——, at ——, did unlawfully steal, take and carry away a certain dog, the property of C. D., then and there being found: contrary to the form of the statute in such case made and provided.*

Having stolen dogs, or the skins thereof.] And "if any dog, or the skin thereof, shall be found in the possession or on the premises of any person, by virtue of any search warrant to be granted as is hereafter in that behalf provided, the justice by whom such search warrant was granted may restore the same to the owner thereof; and the person, in whose possession or on whose premises the same shall be so found, (such person knowing that the dog has been stolen, or that the skin is the skin of a stolen dog,) shall, on conviction before any two or

more justices of the peace, be liable for the first offence to pay such sum of money, not exceeding twenty pounds, as to the justices shall seem meet; and if any person so convicted shall be afterwards guilty of the said offence, every such offender shall be deemed guilty of a misdemeanor, and punishable accordingly." *Id. s.* 3.

The conviction before two justices, is in the ordinary form, *ante*, p. 372; and the offence may therein be described thus:" *That on ——, at ——, by virtue of a certain search warrant before then granted by J. P. esquire, one of Her Majesty's justices of the peace in and for the said county, [the skin of] a certain dog, the property of C. D., was found in the possession* [or *on the premises, to wit, in the dwelling house*] *of E. F. of —— in the county aforesaid, he the said E. F. then and there well knowing that the said dog had been stolen: contrary to the form of the statute in such case made and provided:—*

Prosecution.] "Any person found committing any offence punishable either upon summary conviction or upon indictment by virtue of this Act, may be immediately apprehended without a warrant by any police officer, or by the owner of the dog with respect to which the offence shall be committed, or by his servant or any person authorized by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law; and if any credible witness shall prove upon oath, before a justice of the peace, a reasonable cause to suspect that any person has in his possession or on his premises any stolen dog, such justice may grant a warrant to search for such dog; and any person to whom any dog shall be offered to be sold or delivered, if he shall have reasonable cause to suspect that such dog has been stolen, is hereby authorized, and, if in his power, is required, to apprehend and forthwith to convey before a justice of the peace the party offering the same, together with such dog, to be dealt with according to law." *Id. s.* 5.

And "any justice may, if he shall think fit, remand for further examination, or may suffer to go at large (with or without sureties) upon his personal recognizance, any person who shall be charged before him with any offence or misdemeanor punishable by this Act, whether the same be punishable by summary conviction or as an indictable misdemeanor." *Id. s.* 7.

And "in every case of summary conviction under this Act, where the sum which shall be forfeited for the value of any dog as is herein-before provided, or which shall be imposed as a penalty by the justices, shall not be paid—either immediately after the conviction or within such period as the justices shall at the time of the conviction appoint,—it shall be lawful for the convicting justices to commit the offender to the common gaol or house of correction, there to be imprisoned only, or

imprisoned and kept to hard labour, for any term not exceeding two calendar months where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs, shall not exceed five pounds,—and for any term not exceeding four calendar months, where the amount, with costs, shall not exceed ten pounds,—and for any term not exceeding six calendar months in any other case,—the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs." *Id. s.* 8.

Compounding offences.] "If any person shall publicly advertize or offer a reward for the return or recovery of any dog which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any dog which shall have been stolen or lost without seizing or making any inquiry after the person producing such dog: every such person shall forfeit the sum of twenty-five pounds for every such offence, to any person who will sue for the same, by action of debt, to be recovered with full costs of suit." *Id. s.* 4.

Receiving money, to restore stolen dogs.] And "any person who shall corruptly take any money or reward directly or indirectly, under pretence or upon account of aiding any person to recover any dog which shall have been stolen, or which shall be in the possession of any person not being the owner thereof, shall be guilty of a misdemeanor, and punishable accordingly." *Id. s.* 6. This must be understood to mean an indictable misdemeanor.

Allowing savage dogs to go unmuzzled.] If a man have a dog, which he knows to be of a savage nature, and addicted to bite mankind, and he allow it to go in any frequented place, without being muzzled or otherwise guarded so as to prevent injury from it, it seems that he is indictable as for a common nuisance. *See* 1 *Russ.* 303.

DRUNKENNESS.

How punishable.] If any person shall be drunk, and thereof be convicted before one justice on view, confession, or the oath of one witness, he shall forfeit for the first offence five shillings, to be paid within one week after conviction to the church-

wardens, for the use of the poor; and if he refuse or neglect to pay the same, it may be levied by distress; or if the offender be not able to pay, he shall be committed to the stocks, there to remain for the space of six hours. And if he be convicted a second time, he shall be bound in a recognizance with two sureties in the sum of 10*l*., conditioned to be thenceforth of good behaviour. 21 *Jac.* 1, *c.* 7, *ss.* 1, 3.

Conviction in the ordinary form;—*For that A. B., of —— on —— at ——, was drunk: against the form of the statute in such case made and provided. Whereupon the said A. B.*, &c.

No excuse for crime.] Voluntary drunkenness is no excuse whatever for crime, but the party shall be punished in precisely the same manner as if he were sober at the time he committed the act. *Co. Lit.* 247. 1 *Hawk. c.* 1, *s.* 6. *And see R.* v. *Carroll*, 7 *Car.* & *P.* 145. *R.* v. *Meakin, Id.* 297.

DRUGS.

See "Abortion."

ELECTOR.

See "Parliament."

EMBEZZLEMENT.

By clerks or servants.] "If any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall, by virtue of such employment, receive or take into his possession any chattel, money, or valuable security, for or in the name or on the account of his master, and shall fraudulently embezzle the same or any part thereof: every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security was not received into the possession of such master, otherwise than by the actual possession of his clerk, servant, or other person so employed;" punishment, transportation for not more than fourteen years nor less than seven, or imprisonment with or without hard labour for not more than three years. 7 & 8 *G.* 4, *c.* 29, *s.* 47.

A female servant is within the Act; *R.* v. *Eliz. Smith, R.* & *Ry.* 267; so is an apprentice. *R.* v. *Mellish, R.* & *Ry.* 80. And

it is immaterial whether the clerk or servant be paid by wages, or by a per centage on the profits arising from his labour; *R.* v. *Hartley*, *R.* & *Ry.* 139. *R.* v. *Carr*, *Id.* 198; or whether his employment be permanent or occasional only. *R.* v. *Wm. Spencer*, *R.* & *Ry.* 299. *R.* v. *Hughes*, *Ry.* & *M.* 370. And a clerk of a joint stock bank, may be convicted of embezzling the money of the company, although he be a shareholder or partner in the company. *R.* v. *Atkinson*, *Car.* & *M.* 525. It must appear that he was authorized to receive either the particular money, &c., which he has embezzled, or money generally, for his master; *R.* v. *Thomas Smith*, *R.* & *Ry.* 516. *R.* v. *Beechey*, *Id.* 319. *R.* v. *Williams*, 6 *Car.* & *P.* 626; and if money be paid to a servant, who was never entrusted by his master to receive any money, and he embezzle it, it will not be a case within the statute. *R.* v. *Thorley*, *Ry.* & *M.* 343. *R.* v. *Mellish*, *R.* & *Ry.* 80. *R.* v. *Hawtin*, 7 *Car.* & *P.* 281; *and see* *R.* v. *Wilson*, 9 *Car.* & *P.* 27. The embezzlement is usually to be implied from circumstances: as that, having received the money, he ran away without accounting for it; *R.* v. *Sarah Williams*, 7 *Car.* & *P.* 338; or although he may have continued in the service, that he denied the receipt of the money, &c.; *R.* v. *Hobson*, *R.* & *Ry.* 56. *R.* v. *W. Taylor*, *Id.* 63; or did not account with his master for that particular money, when he accounted for others received at the same time or afterwards. *R.* v. *John Hall*, *R.* & *Ry.* 463; *and see* *R.* v. *Jackson*, *Car.* & *K.* 384. But merely not accounting for money received, which the clerk or servant had authority to receive, or not entering it in the books, will not of itself be sufficient to convict him of embezzlement, if he did not deny the receipt of it, *R.* v. *Jones*, 7 *Car.* & *P.* 833, and the case be unattended by any other circumstance proving an intent to defraud the master of it. Or if, instead of denying the appropriation, he, in rendering his accounts, admit it, alleging a right, however unfounded, or an excuse, however frivolous, he is not deemed guilty of embezzlement; *R.* v. *Norman*, *Car.* & *M.* 501; and the same, although he afterwards abscond. *R.* v. *Creed*, *Car.* & *K.* 63. And in one case it was holden by Vaughan B., that, where the prisoner had entered the sum, as received, in his master's book, but did not pay it over, this was not embezzlement. *R.* v. *Hodgson*, 3 *Car.* & *P.* 422. But in a recent case, where the coachman of a stage-coach had to account for monies received by him from passengers, to the bookkeeper at one of the stages, and had to pay over the monies to his master; and on one particular occasion, he returned the true sums to the bookkeeper, and they were entered in the books accordingly, but he paid to his master a less sum, as being all that he had received: Patteson, J., held this to be embezzlement. *R.* v. *White*, 8 *Car.* & *P.* 742. So, where a banker's cashier was indicted for em-

bezzlement, it appeared that it was his duty to put all sums received by him into a box or till, of which he kept the key, and to enter them in the money book; at the end of each day, he balanced the book, and the balance formed the first item in his account on the following day; the master having a suspicion of him, examined his money book, according to which there ought then to be £1,300 in the till and box, but on examining these, there was in fact but a sum of £345 in them, he having applied the rest to his own use, but when, or in what sums, or from whom the particular monies embezzled was received, did not appear: the judges at the central criminal court held this to be within the statute, and the prisoner was convicted. *R.* v. *Grove*, 7 *Car.* & *P.* 635; *but see R.* v. *Chapman*, *Car.* & *K.* 119. So, where a servant, authorized to receive money, and whose duty it was to account every evening for what he so received, received three sums for his employer on different days, and neither accounted for them nor paid them over: Coleridge, J., held this to be embezzlement, although the servant never denied the receipt of these sums, nor rendered any account in which they were omitted. *R.* v. *Jackson*, *Car.* & *K.* 384. And the embezzlement may be deemed to have been committed, either in the county, &c., where the prisoner received the money, &c., or in that in which he ought to have accounted to his master and did not. *R.* v. *Hobson*, *R.* & *Ry.* 56. *R.* v. *W. Taylor*, *Id.* 63. If, instead of receiving it from a third person, he take the money out of his master's stock, the offence is larceny, not embezzlement. *R.* v. *Murray*, *Ry.* & *M.* 276. *See R.* v. *Wilson*, 9 *Car.* & *P.* 27.

Commitment:—*On —— at ——, being then clerk* [or *servant*] *to C. D., did receive and take into his possession certain money, to the amount of ten pounds and upwards, for and in the name and on the account of the said C. D. his master, and the said money feloniously did embezzle; against the form of the statute in such case made and provided. And you the said keeper*, &c. If the property embezzled consist of money, bank notes, bills of exchange, &c., or other valuable security, it may be described as "certain money" as in the above form; but where goods or chattels have been embezzled, they must be described shortly, as in larceny. *See* 7 & 8 *G.* 4, *c.* 29, *s.* 48.

As to embezzlement by agents, bankers, &c. *see ante*, p. 14, *tit.* "*Agent.*"

By officers in Her Majesty's service.] "If any person employed in the public service of his Majesty, and entrusted by virtue of such employment with the receipt, custody, management or control of any chattel, money or valuable security, shall embezzle the same or any part thereof, or in any manner fraudulently

apply or dispose of the same or any part thereof, to his own use or benefit, or for any purpose whatsoever except for the public service: every such offender shall be deemed to have stolen the same:" and on conviction, shall be transported for not more than fourteen years nor less than seven, or imprisoned with or without hard labour for not more than three years. 2 *W.* 4, *c.* 4, *s.* 1. *See R.* v. *Townsend, Car. & M.* 178.

The commitment may readily be framed from the last form. The property may be laid, both in the commitment and indictment, "in the King's Majesty." *Id. s.* 4. The offender may be indicted, tried, &c., either in the county or place in which he committed the offence, or in that in which he was apprehended. *Id. s.* 5.

As to stealing or embezzling the Queen's stores, &c. *see post, title "Queen's stores, embezzling, &c."*

EMBRACERY.

Embracery is an attempt to corrupt or influence jurors to give their verdict in favour of a particular party. All attempts whatsoever to corrupt, influence or instruct a jury, or in any way to incline them to be more favourable to one side than to the other, by money, promises, letters, threats, or persuasions, or in any other way than by the strength of the evidence and the arguments of counsel, at the trial in open court, is an act of embracery; 1 *Hawk. c.* 85, *s.* 1; and is punishable by indictment at common law, as a misdemeanor, with fine or imprisonment, or both. *Id. s.* 7, *and c.* 83, *s.* 38; and with fine or imprisonment by some ancient statutes, 5 Ed. 3, c. 10; 34 Ed. 3, c. 8, and 38 Ed. 3, c. 12.

And by stat. 6 G. 4, c. 50 (the jury act), s. 61, it is provided, enacted and declared, that notwithstanding anything therein contained, every person who shall be guilty of the offence of embracery, and every juror who shall wilfully or corruptly consent thereto, shall and may be respectively proceeded against by indictment or information, and be punished by fine or imprisonment, in like manner as every such person and juror might have been before the passing of that Act.

ENGROSSING.

See "Forestalling."

ERROR, WRIT OF.

In what cases.] After judgment given against a defendant, upon an indictment at sessions, if the indictment be bad in substance, or the judgment be erroneous, or any other defect in substance appear upon the face of the record, the defendant may have the judgment reversed by writ of error. *Arch. Sess. Pr.* 30. But a writ of error will not lie upon a summary conviction; *Anon. Vent.* 33. *Anon. Id.* 171. *Berry's case*, 2 *Jon.* 167. *Vin. Abr. Error*, D. 2 *Bac. Abr. Error*, A.; not even upon a conviction of forcible entry, by justices of the peace upon view; *Anon. Vent.* 171; nor in any other case, except upon a judgment for the crown upon an indictment, as above mentioned. Before the writ, however, is sued out, the attorney-general's *fiat* for it must first be obtained. *See Arch. Pr. Cr. Of.* 201, 204.

There seem to be two modes of proceeding in this respect, either of which the defendant may adopt at his option: he may bring the writ of error, directed to the justices, and have the record returned to the court of Queen's Bench, by virtue of it; or he may have the record removed into the court of Queen's Bench by *certiorari*, and then bring a writ of error *coram nobis* upon it. *R.* v. *Foxley*, 1 *Salk.* 266. 3 *Com. Dig. Error*, B. If the writ be directed to the justices, it is delivered to the clerk of the peace, who then makes up the record, and returns it, with the writ, to the crown office. *See the form of the return*, *Arch. Pr. Cr. Of.* 202.

When a stay of execution.] By stat. 8 & 9 Vict., c. 68, s. 1, in every case of judgment for a misdemeanor, where the defendant shall have obtained a writ of error to reverse such judgment, execution thereupon shall be stayed until such writ of error shall be finally determined; and in case the defendant shall be imprisoned under such execution, or any fine shall have been levied, either in whole or in part, in pursuance of such judgment, the said defendant shall be entitled to be discharged from imprisonment, and to receive back any money levied on account of such fine from the person in whose possession the same shall be, until such final determination as aforesaid:—provided always, that no execution upon any such judgment shall be stayed, unless and until the defendant shall become bound by recognizance, to be acknowledged before one of the judges of Her Majesty's court of Queen's Bench, or one of the commissioners appointed to take special bail in actions depending in the superior courts, with two sufficient sureties, to be approved of by such judge or commissioner, in such sum as such judge or commissioner shall direct, to prosecute the writ of error with effect, and (in case the judgment shall be affirmed) forthwith to ren-

der the said defendant to prison, according to the said judgment, where imprisonment shall have been adjudged; and every such recognizance shall, after justification of bail, be filed of record in the said court of Queen's Bench, in like manner and upon payment of the like fees as in the case of other recognizances filed in the crown office in that court; and the judge of the said court of Queen's Bench, and the said commissioner, shall have the like powers in respect of the justifying such bail in error, and the examination of the sureties, and the like rules shall apply, as in respect of special bail in actions depending in such court:—provided always, that in the case of any defendant under legal disability, it shall be sufficient if two persons, to be approved of by such judge or commissioner, shall become bound by recognizance on the behalf of such defendant, to be acknowledged and conditioned as aforesaid.

And the clerk of the crown in the said court of Queen's Bench, shall, for the purposes herein-after mentioned, make out and deliver to the defendant or his lawful attorney, a certificate in writing under his hand that such recognizance is duly filed of record in such court, upon payment of the like fee as for other certificates delivered at the crown office; and any such certificate, when duly verified by affidavit to be made before one of the judges of the superior courts of common law, or a commissioner duly authorized, shall be a sufficient warrant to every gaoler or other person having custody of such defendant in execution of such judgment to discharge him out of custody, and also to every person having in his possession the whole or any part of any fine levied in execution of such judgment, to authorize and require the repayment thereof to the defendant; but no person who shall have received any such money, and have paid it over to any other person, according to the course of the exchequer, shall be liable to repay to the defendant any part of the money so paid over. *Id. s.* 2.

In what cases quashed.] If the court, in which any such writ of error shall be pending, shall upon motion in that behalf decide that the defendant by whom it shall be brought has wilfully delayed or neglected to prosecute the same with effect, it shall be lawful for such court to order the writ of error to be quashed, and thereupon the defendant who brought such writ of error shall be liable to execution upon the judgment. *Id. s.* 5.

Judgment, &c.] If the court decide in favour of the defendant, they do not pronounce the judgment which ought to have been given by the court below, nor do they send back the record to that court to do so, but they award that the judgment be reversed and the defendant discharged. *R.* v. *Bourne et al.*, 7 *Ad. & El.* 58.

If they decide against him, they merely affirm the judgment,

and remand the defendant to his former custody, to undergo his punishment. In cases of misdemeanor, where the defendant has been adjudged to be imprisoned, if upon error the judgment be affirmed, the period for the continuance of the imprisonment in pursuance of such judgment, if such imprisonment shall not have commenced under such execution, shall be reckoned to begin from the day when such defendant shall be in actual custody under such judgment; and if the defendant shall have been discharged from imprisonment in manner herein-before provided, he shall be liable to be imprisoned for such further period as, with the time during which he may already have been imprisoned under such execution, shall be equal to the period for which he was so adjudged to be imprisoned as aforesaid. 8 & 9 *Vict., c.* 68, *s.* 3. And when the judgment shall have been for payment of a fine, and imprisonment until such fine be paid, either with or without imprisonment for a certain time, and the defendant shall have paid the fine, or the same or any part thereof shall have been levied, and shall have been received back, under the provisions herein-before contained, and the judgment upon writ of error brought shall be affirmed,—the defendant shall not be entitled, by reason of such payment as aforesaid, to be discharged from imprisonment, (notwithstanding the expiration of any certain time of imprisonment for which the original judgment shall have been given,) until the fine shall be again paid. *Id. s.* 4.

ESCAPE.

Punishment of the party escaping.] If a person, lawfully arrested upon a criminal charge, escape from the person having him in custody, he is guilty of a misdemeanor, and punishable with fine or imprisonment, or both. *See* 2 *Hawk. c.* 17, *s.* 5. When and how punishable, as a breach of prison, will be treated of hereafter, under the title "*Prison Breaking.*"

Aiding prisoners to escape.] Aiding a prisoner, in custody on a criminal charge, to escape, was at common law a misdemeanor, *R.* v. *Buckle,* 1 *Russ.* 361, if the party knew of his offence. *See R.* v. *Young,* 1 *Russ.* 391.

If any person shall assist a prisoner to attempt to escape from any constable or other officer or person, who shall have the lawful charge of him in order to carry him to gaol, under a commitment for treason or felony, expressed in the warrant: felony, transportation for seven years. 16 *G.* 2, *c.* 31, *s.* 3.

But this does not extend to cases, where the commitment

is merely for suspicion of felony; *R.* v. *Walker*, 1 *Leach*, 97. *R.* v. *Greeniff*, *Id.* 363; nor to cases where an actual escape is effected. *R.* v. *Tilley*, 2 *Leach*, 662.

Commitment:—*For that one C. D. on —— at ——, being lawfully in custody of one E. F. a constable, in order to carry him the said C. D. to gaol, under and by virtue of a warrant of G. H. esquire, one of her Majesty's justices of the peace in and for the county of ——, for having feloniously stolen the goods of I. K., he the said A. B. feloniously and unlawfully did then and there assist the said C. D. in attempting to escape from the custody of the said E. F.; against the form of the statute in such case made and provided. And you the said keeper, &c.*

See further upon this subject, *post*, *titles "Prison Breaking" and "Rescue."*

Punishment of officers allowing escape.] If a constable, gaoler or other officer, having a prisoner in lawful custody, allow him to escape, it is either through negligence, or done intentionally; which latter is technically termed a voluntary escape. A negligent escape is a misdemeanor, and punishable with fine, or imprisonment, or both. A voluntary escape is punishable, in like manner as a misdemeanor, whether the party escaping were guilty or not of the offence imputed to him; 2 *Hawk. c.* 19, *s.* 26; but if he be retaken and convicted, then the offence of the officer in allowing him to escape, is punishable in the same manner as the offence of which the party was convicted, and is of the same degree, whether treason, felony or misdemeanor. 2 *Hawk. c.* 19, *s.* 22. In order, however, to constitute an escape of either kind, punishable as above mentioned, there must have been an actual arrest of the party, justifiable in point of law, 2 *Hawk. c.* 19, *s.* 2, and upon a criminal charge. *Id. s.* 3.

In the same manner, if a private person arrest a man for an offence, in cases where by law he may do so, if he allow such person to escape, before he hands him over to the custody of the constable or other officer, (*see ante*, p. 133,) he is in like manner punishable for it. 2 *Hawk. c.* 20, *ss.* 2, 6.

Commitment:—*On —— at ——, having one C. D. in his custody, under and by virtue of a warrant of G. H. esquire, one of her Majesty's justices of the peace in and for the county of ——, for having feloniously stolen the goods of E. F., did unlawfully and* [*negligently* or *voluntarily*] *permit the said C. D. to escape and go at large. And you the said keeper, &c.*

Escape of prisoners of war.] If any person shall knowingly and wilfully aid or assist a prisoner of war to escape, he shall be deemed guilty of felony, and shall be transported for life, or for not less than seven years. 52 *G.* 3, *c.* 156, *s.* 1. *See R.* v. *Martin*, *R.* & *Ry.* 196.

Other escapes.] Aiding a person to escape, who is in lawful custody, though not on a criminal charge, is a misdemeanor at common law, and punishable as such with fine or imprisonment or both. *R.* v. *Allan, Car.* & *M.* 295.

As to escaping from prison, or aiding a prisoner to do so, see "*Prison Breaking.*"

As to the escape of convicts under sentence of transportation, or aiding them to escape, or rescuing them from the custody of persons removing them, see "*Transportation.*"

ESTREAT.

See "*Recognizance.*"

EVIDENCE.

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1. *What must be proved.*

The facts constituting the offence, &c.] Offences at common law, are defined by the rule of the common law relating to

them; offences by statute, are defined by the statute creating them. In both cases, every thing stated in the definition of the offence, is material, and must be proved. On the other hand, if any thing stated in an information or indictment, &c., be not included in the definition of the offence, it may be rejected as surplusage, and need not be proved. *R.* v. *Wm. Jones*, 2 *B.* & *Ad.* 611. In the same manner, the facts constituting a legal defence, must be proved.

Intent.] The intent with which an act is done, often forms a part, and a most material part, of the definition of an offence, and must be proved accordingly. This does not admit of positive proof; it can be proved only by the confession of the party, or by proving facts from which it may fairly be inferred.

Malice.] Malice often forms a material part of the definition of an offence, and must be proved: but this, like intent, can only be proved by the confession of the party, or by the proof of facts from which it may be inferred. It may often be inferred from the facts of the case alone: for instance, if a man, without any apparent motives, wilfully do an act which must necessarily be injurious to another, we are warranted in saying that he did it maliciously, unless he prove the contrary. Where the offence is committed in respect to inanimate things, the malice, if inferred, must of course be deemed to be malice towards the owner; but if committed with repect to animals, it may possibly be from malice to the animal, and not to the owner. There were formerly some nice distinctions taken upon this subject, with respect to some of the offences now punishable under one of Peel's Acts, (7 & 8 *G.* 4, *c.* 30,) relating to malicious injuries; but it is provided by that statute, "that every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise." 7 & 8 *G.* 4, *c.* 30, *s.* 25.

Guilty knowledge.] A guilty knowledge of some particular fact, sometimes forms a material ingredient in an offence, and must of course be proved: such for instance, as uttering a forged instrument, knowing it to be forged: receiving stolen goods, knowing them to have been stolen; and the like. And this guilty knowledge, like intent and malice, can be proved only from the party's confession, or by proving facts from which it may be inferred. Where a man was charged with uttering a forged bill of exchange, knowing it to be forged, evidence that he gave a false account as to the parties to it, and

that when he was apprehended he had other forged bills in his possession, was received in proof of his guilty knowledge that the first bill was forged. *R.* v. *Haugh*, *R.* & *Ry.* 120. So, that he had previously uttered other forged notes of the same description, would be good evidence of it. *R.* v. *Ball*, *R.* & *Ry.* 132. So, upon a charge of uttering counterfeit coin, knowing it to be counterfeit, the guilty knowledge may be inferred from the party's having other base coin in his possession at the time, or having passed other base money about the time, or the like. *See* 2 *Arch. P. A.* 247, &c. So upon a charge of receiving stolen goods, knowing them to have been stolen, evidence that the party had at other times received goods from the same party, under suspicious circumstances, *R.* v. *Dunn and Smith*, *Ry.* & *M.* 146, or that he concealed the goods, or bought them for a price much under their value, or the like; may be received in proof of his guilty knowledge that they had been stolen.

Time and place.] The time at which an offence is charged to have been committed, unless it be of the essence of the offence, need not be proved as laid; a variance in this respect is wholly immaterial.

So, if an offence be charged to have been committed at a particular place within the county or other jurisdiction of the magistrate or court, and it be proved to have been committed at some other place within the same jurisdiction, the variance will be wholly immaterial, unless the place be laid as matter of local description.

2. *The Manner of Proof.*

By confessions.] A confession of an offence, by the party charged with it, if obtained without any inducement holden out to him, by threat or promise of favour, is always receivable in evidence against him, and is often the strongest evidence that can be given. This subject has already been fully treated of, *ante*, p. 292—294. It is immaterial whether the confession be made before commitment, or at the time, or after it, or, in the case of summary convictions, whether it be made before or at the time of the hearing. So the admission of an inhabitant of a township, has been holden admissible evidence in support of an indictment against his township for not repairing a highway, even although he was not rated; for he was a party to the record. *R.* v. *Adderbury East*, 13 *Law J.* 9, *m.* 5 *Q. B.* 187.

By presumptions.] A presumption is, where some facts being proved, another follows as a natural or very probable conclusion from them, so as readily to gain assent from the mere

probability of its having occurred. *Arch. Pl. & Ev. civ. act. 362, 363.* The fact there assented to, is said to be presumed; that is, taken for granted, until the contrary be proved by the opposite party: *stabitur præsumptioni, donec probetur in contrarium. Co. Lit.* 373. And it is adopted the more readily, in proportion to the difficulty of proving the fact by positive evidence, and to the obvious facility of disproving it, or of proving facts inconsistent with it, if it really never occurred. These presumptions are of three kinds: *violent* presumptions, where the facts and circumstances proved, *necessarily* attend the fact presumed; *probable* presumptions, where the facts and circumstances proved, *usually* attend the fact presumed; and light or rash presumptions, which, however, have no weight or validity at all. For instance, in larceny, if the stolen goods be found in the possession of a person, shortly after the stealing of them, and he give no satisfactory account of the manner in which he came by them, it is presumed that he is the person who stole them; and if to this be added evidence that the goods, when found, were concealed or disguised, or that the prisoner when charged with the offence absconded, it will very much strengthen the presumption. On the other hand, if the goods be not found for a considerable time after they were stolen, the presumption is proportionably weakened.

Under this head is classed that very usual mode of proving offences adopted from necessity, called circumstantial evidence. Direct and positive evidence of the commission of offences, cannot in all cases be procured; they are often committed in secret, and if circumstantial evidence were excluded by our law, all secret offences might be committed with impunity. Circumstantial, or (as it is frequently termed) presumptive evidence, therefore, is allowed in all cases where direct and positive evidence of the defendant's having committed the offence cannot be procured; and it is often as satisfactory as direct and positive evidence.

Under this head also, might be classed the proof of intent, malice, and guilty knowledge, which we have already considered, *ante*, p. 443.

Also, upon an indictment against any person, exercising an office, profession or employment, for a criminal act done by him as such officer, &c., proof that he acted as such officer, &c., will raise the presumption that he was duly appointed, and his appointment therefore need not be proved. *See* 6 *T. R.* 535, n. 4 *T. R.* 366, *per Buller, J.* 1 *Stark.* 405. *Peake*, 236. So in proof of offences against officers, as for instance, peace officers, *per Buller, J. in Berryman* v. *Wise*, 4 *T. R.* 366, or officers, &c. employed in the prevention of smuggling, 3 & 4 *W.* 4, *c.* 53, *s.* 118, or the like, proof of their having acted as such, will be deemed sufficient evidence of their being such, without proving their appointment. And the same in other cases, where

it becomes a question whether a person, acting as a public officer, was so at the time; *R.* v. *Jones*, 2 *Camp.* 131; for it is a general presumption of law, that a person acting in a public capacity, is duly authorized so to do. *Per Ld. Ellenborough, C. J.*, 3 *Camp.* 433, 432.

By proofs.] Proofs are of two kinds: written evidence, and parol testimony: both of which shall be treated of, in a subsequent part of this title. We shall in this place merely notice the general rule, which is applicable as well to criminal cases as to civil actions, namely, that the best evidence the nature of the case will admit of must be produced, if it be possible to be had; but if not possible, then the next best evidence that can be had shall be allowed. 1 *Arch. Pl.* & *Ev. civ. act.* 372. For if it be found that there is any better evidence existing than that which is produced, the very non-production of it creates a presumption that it would have detected some falsehood, which at present is concealed. 3 *Bl. Com.* 368. *Gilb. Ev.* 16. 1 *Show.* 397. *Carth.* 220. 3 *East*, 192.

And within the meaning of this rule, written evidence is better than parol evidence, of the same facts. And therefore, in order to prove the contents of a deed, agreement, bill of exchange, or the like, nothing else shall be admitted as proof of it but the deed, &c. itself, if in being, and within the control of the party who has to prove it; *Gilb. Ev.* 93. 10 *Co.* 92 *b.* 93. *R.* v. *Merthyr Tydvil*, 1 *B.* & *Ad.* 29; and it is deemed to be within his control, if it be in the hands of any third person whom he may compel by *subpœna duces tecum* to produce it. In parol evidence, however, there is no such distinction: if A. be called as a witness to prove a fact, and it appears that B. can give better parol evidence of it, still this does not prevent A. from being examined; the not calling of B. is merely matter of observation.

But in cases where there had been written evidence of the fact, if the writing have been destroyed or lost, then upon proof of that fact, secondary evidence shall be allowed to be given of it, that is to say, proof by an examined copy, or even parol evidence of its contents. If it be proved to have been destroyed, then the party is entitled, as of course, to prove its contents by secondary evidence. But if that cannot be proved, then, to let in secondary evidence, the court must be satisfied by evidence that the original is lost, or that, after diligent search for it, it cannot be found; and parol evidence to this effect, must be given by the person or persons who actually at one time had the custody of the original, or those legally entitled to the custody of it, and those likely to have it. *See R.* v. *Castleton*, 6 *T. R.* 236. *R.* v. *Stourbridge*, 8 *B.* & *C.* 96. It is not necessary that such evidence should prove a destruction of the instrument; if it prove such diligence in searching for

it, as to relieve the party of all charge of laches in not making further inquiry, it will be sufficient. *R.* v. *Morton*, 4 *M.* & *S.* 48. *And see R.* v. *East Farleigh*, 6 *D.* & *R.* 147. *R.* v. *Piddlehinton*, 3 *B.* & *Ad.* 460.

If the written instrument be in the hands of the opposite party, so that you cannot produce it, or compel its production by a *subpœna duces tecum*, you must serve such opposite party with a notice to produce it at the trial, &c., and if he fail to do so, you may then give secondary evidence of its contents. *Arch. Pl.* & *Ev. civ. act.* 382—387. And the same, if it be in the hands of his attorney, banker, or agent. 2 *Car.* & *P.* 520. 1 *Id.* 582. But if the written instrument be merely a notice, it is not necessary to give a notice to produce it; *Arch. Pl.* & *Ev. civ. act.* 383; also in larceny of a written instrument, it is not necessary to give the defendant notice to produce it; *R.* v. *Aickles*, 1 *Leach*, 530; and the like in other cases. *See Arch. Sess. Pr.* 140—142.

3. *Written Evidence.*

Acts of Parliament.] Public Acts need not be proved; nor local Acts containing a clause, either making them public Acts, or directing the judges to take judicial notice of them. But private Acts, not containing any such clause, must be proved in the same manner as any other record, namely, by an examined copy of the enrolment. The statutes of Ireland, previous to the union, may be proved in this country, by copies printed and published by the Queen's printer.

Other records.] The records of the Queen's courts of common law at Westminster, may be proved by an examined copy. So the record of an indictment at the assizes or sessions, may be proved by an examined copy: or the record itself may be produced. And for this purpose the record must be made up; for the indictment itself cannot be given in evidence; *R.* v. *Smith et al.*, 8 *B.* & *C.* 341. *R.* v. *Thring*, *Ry.* & *M.* 171. So, to prove an order of sessions, the record must be made up; and it is then proved by an examined copy, or by the production of the record itself. Where the sessions book was produced in such a case, but the clerk of the peace said he would have made up the record on parchment if it had been bespoken, Park, J. refused to receive the book as evidence. *R.* v. *Ward*, 6 *Car.* & *P.* 366. But on the other hand, where the entry of the order in the sessions book had a regular caption, and was in the present tense, and in every other respect as a record, and it was proved that no other record ever was made up, the court held that the book was legal evidence of the order. *R.* v. *Yeovley*, *MS. M.* 1838, 8 *Law J.*, 9 *m.* A conviction be-

fore a magistrate is proved by an examined copy; *see* 5 *Car. & P.* 3. 1 *Arch. P. A.* 456. 2 *Id.* 70; or the conviction may be produced. And if it recite the information, it will be evidence of that also. 5 *Car. & P.* 38.

Matters quasi of record.] Entries in the journals of the houses of Lords and Commons, may be proved by examined copies. *Cowp.* 17. *Doug.* 594. Bill, answer, depositions and decree in a court of equity, are also proved by examined copies. *Gilb. Ev.* 49, 50, 56. And the same, as to proceedings in the admiralty court. *Com. Dig. Evidence*, C. 1. The proceedings in inferior courts not of record, such as the county court, court baron, or the like, are usually proved by producing the books in which they are entered, and proving them by the clerk of the court; or, it seems, they may be proved by examined copies. *See Gilb. Ev.* 74, 20; *Com. Dig. Evidence*, C. 1. As to the proof of proceedings in bankruptcy, see 6 *G.* 4, *c.* 16, *ss.* 96, 2 & 3 *W.* 4, *c.* 114, *ss.* 5—9. As to the proof of proceedings in the insolvent court, see 1 & 2 *Vict. c.* 110, *ss.* 105, 46. 7 *G.* 4, *c.* 57, s. 76.

Depositions of deceased witnesses.] The deposition of a witness, taken before a magistrate or coroner, in pursuance of stat. 7 G. 4, c. 64, ss. 2, 3, 4 (*ante*, pp. 286, 287), in the presence of the prisoner, so that the prisoner had an opportunity of cross-examining the witness if he thought fit, may be given in evidence against the prisoner after the witness's death, *R.* v. *Smith*, *R.* & *Ry.* 339, or insanity, *see R.* v. *Marshall et al. Car.* & *M.* 147, or if at the time of the trial he be bed-ridden and not likely ever to be able to attend, *R.* v. *Wilshaw*, *Car.* & *M.* 145, or perhaps otherwise unable to travel. 1 *Hale*, 586; *and see ante*, p. 289. It must be produced, and proved either by the magistrate or coroner, or his clerk, or by any person who was present and attested the witness's signature to it; *see R.* v. *Hopes*, 7 *Car.* & *P.* 136; or by proof of the magistrate's or coroner's signature to it. *See R.* v. *Mary Foster*, 7 *Car.* & *P.* 148. *And ante*, pp. 289, 389. *Arch. Sess. Pr.* 143, 144.

Other public documents.] Inquisitions are proved by examined copies, or the originals may be produced. *See Arch. Pl.* & *Ev. civ. act.* 408, 409. Registers of baptisms, marriages and burials, may be proved by the registers themselves, or examined copies of them. *Gilb. Ev.* 72. As to the proof of registers of baptisms, marriages and burials, deposited with the registrar general, *see stat.* 3 & 4 *Vict. c.* 92. Entries in corporation books, and in the books of public offices and companies, as the books of the Custom House, Bank, East India Company, South Sea Company, and the like, relating to matters public and

general, may be proved by examined copies. 1 *Str.* 93, 307, 2 *Id.* 954, 1005, *Hardw.* 128. 2 *Ld. Raym.* 851. 2 *Doug.* 593, *n.* 3. *Peake*, 43. 4 *Taunt.* 787. The Queen's proclamations are proved by the production of the Gazette containing them. *See* 2 *Camp.* 44. 4 *M.* & *S.* 532. The articles of war may be proved by the copy printed and published by the Queen's printer. 5 *T. R.* 442, 446. *See* 4 *B.* & *C.* 304.

Deeds and other private written instruments.] Deeds and all written instruments of a private nature, must be proved by the attesting witness, if there be one, or if there be no attesting witness, then by proof of the party's handwriting. *Gilb. Ev.* 99. 7 *T. R.* 266. *Peake*, 198. But where a deed or other writing is thirty years old, it proves itself. *Bull, N. P.* 255. *Gilb. Ev.* 94. So, if the attesting witness be dead or have become insane, or blind, or be abroad out of the reach of the process of the court, or if after a *bonâ fide*, serious and diligent inquiry he cannot be found: in those cases the instrument may be proved, by proving the witness's handwriting. *Arch. Pl.* & *Ev. civ. act.* 421—423.

The handwriting may be proved by any person who has seen the party write, or who knows his handwriting from having corresponded with him, particularly if he have acted upon the letters he received from him. *Arch. Pl.* & *Ev. civ. act.* 423, 424. But it cannot be proved by comparing it with other writing of the party. *Id.* 424.

In appeals, all indentures of apprenticeship, leases, agreements, &c. must appear to be correctly stamped, otherwise they ought not to be received or read. Also in prosecutions for larceny of bills of exchange, &c. or for obtaining them under false pretences, the bill, &c. must be duly stamped, otherwise it cannot be deemed a valuable security within the meaning of stat. 7 & 8 G. 4, c. 29, s. 5. *R.* v. *Yates, Ry.* & *M.* 170. But in forgery, it is immaterial whether the instrument be stamped or not. *R.* v. *Hawkswood*, 2 *T. R.* 606.

4. *Parol Evidence.*

In what cases.] In all cases where a fact need not be proved by a record, deed, or other written evidence, (*see ante*, p. 447, &c.) it may be proved by the parol testimony of witnesses. A witness, however, shall not be allowed to give testimony of any thing which he does not know of his own knowledge; what he has heard others say upon any subject, is not in general evidence. To this general rule, however, there are some exceptions: 1st, what is said in the presence and hearing of the prisoner, at a time when he might have contradicted it, and did not, may be given in evidence against him; 2ndly, hearsay

evidence is receivable in proof of a prescription, custom, or pedigree; 3rdly, in a matter of science, a person intimately acquainted with it may be examined as to his opinion of the probable result or consequence from certain facts already proved by others: as for instance, upon a trial for murder or manslaughter, a surgeon or other medical man, who has heard the evidence given, may be examined as to his opinion of the cause of death, and whether he thinks the deceased died from the effects of the blow or wound or other injury proved by the other witnesses, although he himself may have never seen the deceased. *See Arch. Pl. & Ev. civ. act.* 438. And *lastly*, the dying declarations of another, may be proved by any person who was present at the time he made them; see upon this subject, *ante*, p. 291.

Who may be witnesses.] Quakers and Moravians may be witnesses in criminal cases, and may make an affirmation instead of an oath; 9 *G.* 4, *c.* 32. *And see* 3 *&* 4 *W.* 4, *c.* 49; so may the class of Dissenters called Separatists. 3 *&* 4 *W.* 4, *c.* 82. *See post, tit.* "*Oaths.*" Jews may be witnesses, and are sworn upon the Old Testament; so may Turks, Moors, Gentoos, and in fact all persons who believe in a God, in a future state of rewards and punishments, and in the moral obligation of the oath he is about to take; *Bull, N. P.* 292. *Arch. Pl. & Ev. civ. act.* 440; each to be sworn in such form as he deems to be obligatory upon his conscience. See, as to the mode of swearing a Chinese witness, *R.* v. *Entrehman et al., Car. & M.* 248.

Infants of the age of fourteen may be witnesses; and under that age, if they appear to have competent discretion, 2 *Hale*, 278, and to know the obligation of an oath. So, deaf and dumb persons may be witnesses, if there be any person who can interpret their signs upon oath. *R.* v. *Pollock, MS.* 1814. *R.* v. *Ruston*, 1 *Leach*, 408.

The prosecutor in criminal cases, may in general be a witness; even in cases of forgery, the person whose name is forged, may now be a witness to sustain the prosecution. 9 *G.* 4, *c.* 32, *s.* 2. There are these exceptions, however, to the rule: where an offence is punishable by fine only, and the fine or part of it is given by statute to the informer, the informer cannot be a witness; *R.* v. *Blackman*, 1 *Esp.* 95, *R.* v. *Cole*, 1 *Esp.* 169; so in forcible entry on stat. 8 H. 6, c. 9, s. 3, or 21 J. 1, c. 15, the prosecutor cannot be a witness for the crown, because upon conviction he will be entitled to restitution; *R.* v. *Williams*, 9 *B.* & *C.* 549; but upon an indictment for forcible entry at common law, he may.

As to inhabitants of parishes, &c. statutes were formerly passed from time to time, making them competent witnesses in particular cases. An inhabitant of a parish, &c, though

rated, was a competent witness, in all matters relating to rates, boundaries, settlements, orders of removal, bastards, elections or appointment of officers, and officers' accounts; 54 *G.* 3, *c.* 170, *s.* 9; and might give evidence of an offence, although the penalty or part of it (not exceeding 20*l.*) were given to the poor of his parish, &c. 27 *G.* 3, *c.* 29, *s.* 1. Upon indictments against a county for non-repair of a county bridge or the roads at the ends of it, the inhabitants were competent witnesses for the defendants; 1 *Ann.* st. 1, *c.* 18, *s.* 13; but in a prosecution against a parish for non-repair of a highway, the inhabitants were not competent witnesses for the parish. *R.* v. *Inhabitants of Bondgate in Aukland*, 1 *Ad.* & *El.* 744. But now, by stat. 3 & 4 Vict. c. 26, s. 1, it is enacted, generally, that "no person called as a witness upon any trial in any court whatever, may and shall be disabled and prevented from giving evidence, by reason only of such person being, as the inhabitant of any parish or township, rated or assessed or liable to be rated or assessed to the relief of the poor, or for and towards the maintenance of church, chapel or highways, or for any other purpose whatever," which is holden to extend to the owners of land in the parish, who are not rated or liable to be rated for it, but whose tenants are rated. *R.* v. *Doddington*, 1 *Q. B.* 411, *and see R.* v. *Adderbury East*, 13 *Law J.* 9 *m.* And by sect. 2, "no churchwarden, overseer or other officer in and for any parish, township or union, or any person rated or assessed or liable to be rated or assessed as aforesaid, shall be disabled or prevented from giving evidence on any trial, appeal, or other proceeding, by reason only of his being a party to such trial, appeal or other proceeding, or of his being liable to costs in respect thereof, when he shall be only a nominal party to such trial, appeal or other proceeding, and shall be only liable to contribute to such costs in common with other the rate-payers of such parish, township or union." Also generally, by stat. 6 & 7 Vict. c. 85, s. 1, interested witnesses are now rendered competent in cases, criminal as well as civil, provided they are not parties to the proceeding individually named in the record.

If a defendant jointly indicted with others, plead guilty, he may be called as a witness for those who are tried. *R.* v. *George* & *Ford*, *Car.* & *M.* 111. Also, if no evidence be given to affect one of the several defendants who has pleaded not guilty, the court in its discretion may order him to be acquitted, in order that he may give evidence for his co-defendants; 2 *Hawk. c.* 46, *s.* 98; or the prosecutor may apply to have one of several defendants acquitted, in order to make him a witness for the prosecution, and the other defendants cannot object to it. *R.* v. *Rowland et al., Ry.* & *Mo. N. P. C.* 401.

A wife is not a competent witness for or against her husband, when charged with a criminal offence, or a husband for or

against his wife; *Gilb. Ev.* 133, 134. *Bac. Abr. Evidence, A.* 1; except in the case of a personal injury committed by one upon the other, in which case (from necessity) the one may be a witness against the other. *R.* v. *Azyre*, 1 *Str.* 633, *and see* 1 *Ph. Ev.* 79. Even where a husband was indicted for a conspiracy with others, it was holden that his wife could not be called as a witness for the others. *R.* v. *Locker et al.*, 5 *Esp.* 107. And in all cases where a husband would be an incompetent witness, his wife is also incompetent. *R.* v. *Williams*, 9 *B.* & *C.* 549, *and see* 12 *East*, 250. But in no other case of relationship are the parties incompetent to give evidence for or against each other; a father may be a witness for or against his son, a son for or against his father, a brother for or against his brother, &c. 2 *Hale*, 276.

An attorney cannot be obliged, nor indeed will he be allowed, to disclose any confidential communications made to him as attorney, by his client. *Gilb. Ev.* 136, 4 *T. R.* 753. 2 *Brod.* & *B.* 4. The same rule applies to barristers; but not to medical men, or other persons. *Per Buller, J.*, 4 *T. R.* 760.

An accomplice may give evidence against those jointly guilty with him. *See ante*, p. 125. But although in point of law they may be found guilty on his testimony alone, *R.* v. *Jones*, 2 *Camp.* 132, 131, *R.* v. *Hastings*, 7 *Car.* & *P.* 152, yet in practice it is not usual to convict, on the testimony of an accomplice, or of the wife of an accomplice, *R.* v. *Neal* & *Taylor*, 7 *Car.* & *P.* 168, unless his or her story be confirmed in some material parts by the testimony of other credible witnesses; *see R.* v. *Barnard et al.*, 1 *Car.* & *P.* 88. *Arch. Sess. Pr.* 148, 149; and this confirmatory testimony must not merely relate to the manner in which the offence was committed, for that proves only that the accomplice was present at the commission of it; *R.* v. *Wilkes*, 7 *Car.* & *P.* 272. *R.* v. *Webb*, 6 *Id.* 595. *R.* v. *Farler*, 8 *Id.* 106. *R.* v. *Dyke*, 8 *Id.* 261; but it must be as to some facts or circumstances, which tend to connect the accused with the offence, or to connect the accused and the accomplice together. *R.* v. *Addis*, 6 *Car.* & *P.* 388. And where A. was indicted as principal, and B. as receiver, and A. pleaded guilty, and an accomplice was called to give evidence against B: it was holden that evidence confirming some part of his evidence which related to A., was no confirmation of his evidence as it affected B. *R.* v. *Moores and Spindle*, 7 *Car.* & *P.* 270.

Formerly, a person who had been convicted and had judgment for treason, felony, perjury, 2 *Hawk. c.* 46, *s.* 19, or for conspiracy to obstruct the course of justice, *Bushell* v. *Barrett*, *Ry.* & *M. N. P. R.* 432, or other conspiracy for which the villanous judgment might formerly have been given, *see Arch. Sess. Pr.* 149, 150, was incompetent as a witness. Afterwards it was enacted that in all cases where a person, convicted of felony not punishable with death, or with any misdemeanor

except perjury and subornation of perjury, should have endured the punishment adjudged for his offence, it should have the effect of a pardon, and his competency should thereby be restored. 9 *G.* 4, *c.* 32, *ss.* 3, 4. But now by stat. 6 & 7 Vict. c. 85, s. 1, no person, offered as a witness, in any case, civil or criminal, shall be excluded from giving evidence in court or before a magistrate, &c., by reason of incapacity from crime, notwithstanding he may have been convicted.

Number of witnesses required.] In all cases, except treason and perjury, one witness is all that is required by law, unless otherwise directed by the statute creating the offence; and wherever that is the case, it shall be particularly noticed in the course of this work, under its proper head. In treason, not relating to the coin or seals, there must be two witnesses; in perjury, there must be two witnesses to the same assignment of perjury.

Witnesses, how compellable to attend.] In prosecutions by indictment, the witnesses for the prosecution, who attend before the magistrate at the time the prisoner is committed, are usually bound over to attend at the trial and give evidence; *see ante*, p. 295; and for non-attendance, they may be punished by their recognizance being estreated. All other witnesses, on the one side and on the other, may be compelled to attend by *subpœna*, issued either from the crown-office in London, or by the clerk of the peace: if it issue from the crown-office, the court of the Queen's Bench may punish the party by attachment, for non-attendance; *R.* v. *Ring*, 8 *T. R.* 585; but if issued by the clerk of the peace, the remedy is not by attachment, *R.* v. *Brownall*, 1 *Ad.* & *El.* 598, but by indictment. In appeals also, the witnesses may in like manner be compelled by *subpœna*, to attend and give their evidence.

Where a party is charged with an indictable offence before a magistrate, if the magistrate be apprised that any person, who can give material evidence against the prisoner, will not voluntarily attend, he may issue his summons to compel his attendance. *See ante*, p. 294. But in cases of summary conviction, he cannot summon a witness, nor is there any mode of compelling his attendance, unless it be given by the particular statute creating the offence, or regulating the prosecution for it. *See ante*, p. 363.

If the witness be in custody on civil process, he can only be brought up by writ of *habeas corpus*.

Witnesses' expenses.] In a criminal case, a witness cannot refuse to give his testimony until his expenses have been paid to him, even although subpœnaed on the part of the defendant. *R.* v. *James et al.*, 1 *Car.* & *P.* 322. After they

have given their evidence, and the case is determined, if the party on whose behalf they attend be allowed his costs, a sum is usually allowed to him for his witnesses' expenses, at a rate regulated by the table of fees settled by the justices. *See ante, title "Costs."*

EXAMINATION.

See "Commitment."

EXTORTION.

Extortion is the taking of money by any officer, by colour of his office, either where none at all is due, or where he takes more than is due, or where it is not yet due. 1 *Hawk. c.* 68, *s.* 1. *See R.* v. *Higgins*, 4 *Car. & P.* 247. It is a misdemeanor at common law, punishable with fine, or imprisonment, or both. *See* 1 *Hawk. c.* 68, *s.* 5.

Commitment:—*On —— at ——, being then a constable, unlawfully, corruptly, extorsively, and by colour of his said office, did extort and receive of and from one C. D., then in the custody of the said A. B., the sum of ——, as and for a fee due to him the said A. B. as such constable;* [or as the case may be.] *And you the said keeper,* &c.

FACTOR.

See "Agent."

FACTORY.

See "Manufactures."

FALSE IMPRISONMENT.

False imprisonment is a misdemeanor at common law, punishable with fine, or imprisonment, or both. The slightest detention of a party, or restraint of his personal liberty, against his will, is an imprisonment; and if that be done without law-

ful authority, it is technically termed false imprisonment. If a constable or other person arrest a man by virtue of a warrant, which is bad on the face of it, or in a case where the justice granting it had no jurisdiction, this will be a false imprisonment; so if a constable or a private person arrest a man, without warrant, in a case in which he has no authority by law to do so, (*see ante*, pp. 128, 130,) he is guilty of a false imprisonment; and if a gaoler detain the party thus wrongfully arrested, without a fresh warrant legally justifying him, he will be guilty also. False imprisonment therefore is a mixed question of law and fact: whether there was a detention of the party against his will, amounting to an imprisonment, is a question of fact; *see Cant* v. *Parsons*, 6 *Car.* & *P.* 504; and whether the authority under which he was effected was lawful, or was such as did not justify the officer or gaoler, &c. in the detention, is a question of law, depending upon the circumstances of each particular case.

Every false imprisonment is said to include an assault and battery.

Commitment:—*On* ——, *at* ——, *did assault and beat one C. D., and did then and there unlawfully and injuriously, and against the will of the said C. D., and without any legal warrant, authority, or reasonable or justifiable cause whatsoever, imprison the said C. D. And you the said keeper*, &c.

FALSE PRETENCES.

"If any person shall, by any false pretence, obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same: misdemeanor, transportation for seven years, or such fine or imprisonment, or both, as the court shall award." 7 & 8 *G.* 4, *c.* 29, *s.* 53.

The false pretence must be a statement of some pretended existing fact, *see R.* v. *Henderson et al.*, *Car.* & *M.* 328, and made for the purpose of inducing the prosecutor to part with his property. Pretending to be sent to the prosecutor for goods by one of his customers, or for the amount of a debt by one to whom he owed it, or for a loan of money by one of his friends, and thereby obtaining such goods or money; such a case would come within the statute. So, falsely pretending to be Mr. H. who cured Mrs. Clark at the Oxford infirmary, and thereby obtaining from a person 5*s.* for a bottle of eye-water, was holden to be a pretence within the meaning of the statute. *R.* v. *Bloomfield*, *Car.* & *M.* 537. So, if a foreman

by falsely pretending to his master that his workmen have earned to a certain amount, obtain that amount from him, whereas in fact they had earned a less sum, and he applied the difference to his own use, this was holden to be within the statute. *R.* v. *Witchell*, 2 *East*, *P. C.* 830. But, where a man induced a butcher to send him meat, under pretence that he would pay for it on delivery: the judges held this not to be a pretence within the meaning of the statute; it was merely a promise for future conduct. *R.* v. *Goodall*, *R.* & *Ry.* 461. So, pretending that a certain promissory note was a good and valid security, is not a pretence within the Act. *R.* v. *Wikham*, 8 *Law J.* 87, *m.* But a man pretending that his own check is a valid security, when it is drawn upon a banker with whom he never kept an account, is a false pretence within the statute. *R.* v. *Parker*, 7 *Car.* & *P.* 825. It is not necessary, however, that the pretence should be in words: there may be a sufficient false pretence within the meaning of the Act, by the acts and conduct of the party, without any verbal representations of a false or fraudulent nature. As where a man, in payment of some small articles, tendered a forged promissory note for 10*s.* 6*d.* in payment, and received the change: the judges held this to be a false pretence within the meaning of the statute; for the tendering of the note as a genuine instrument, was tantamount to a representation that it was so. *R.* v. *Freeth*, *R.* & *Ry.* 127, *and see R.* v. *John Story*, *R.* & *Ry.* 81. So, where a man at Oxford, but not a member of the University, went to a tradesman's shop, wearing a commoner's cap and gown, and ordered goods, part of which he obtained at this time: this was holden by Bolland, B., to be good evidence to sustain an indictment, alleging that he falsely pretended that he was an undergraduate of the University of Oxford. *R.* v. *Barnard*, 7 *Car.* & *P.* 784. So, where a man paid his addresses to a woman, and obtained from her a promise of marriage, and afterwards, upon her refusing to marry him, he threatened to bring an action against her, and thereby obtained money from her; but it turned out afterwards that he was already married, and therefore could not have maintained such an action: this was holden to amount to an implied pretence that he was unmarried, and he was convicted of obtaining the money by false pretences. *R.* v. *Copeland*, *Car.* & *M.* 516. If a bill of exchange, or the like, be obtained by false pretences, it must appear to be duly stamped; for otherwise it is not a valuable security within the meaning of the Act. *R.* v. *Yates*, *Ry.* & *M.* 170.

It must also appear, by evidence, that the prosecutor parted with his property, by reason of the false pretence alleged, *R.* v. *Dale*, 7 *Car.* & *P.* 352, and of it alone. *R.* v. *Wickham*, 10 *Ad.* & *El.* 34. And it must appear that the pretence was false to the knowledge of the defendant, *R.* v. *Henderson et al.*, *Car.* & *M.* 328. *R.* v. *Philpotts*, *Car.* & *K.* 112, and was used

for the purpose of defrauding the prosecutor of his property. *R.* v. *Henry Williams*, 7 *Car.* & *P.* 354.

Commitment:—*On* ——, *at* ——, *unlawfully did falsely pretend to one C. D. that* [here set out the pretence]; *by means of which said false pretence, the said A. B. then and there unlawfully did obtain from the said C. D.* —— *of the goods and chattels of him the said C. D., with intent then and there to cheat and defraud the said C. D. of the same; against the form of the statute in such case made and provided. And you the said keeper*, &c.

FINE, RECOVERY.

See "Forgery," "Personating."

FINES.

See "Justices."

FIRE ARMS.

See "Arms," "Manufactures."

FIRE-WORKS.

Making or selling.] If any person shall make, give, sell, or offer to sale any squibs, rockets, serpents, or other fire-works, or any cases, moulds, or other implements for making the same, he shall, on conviction before one justice of the peace, forfeit 5*l.*, half to the poor and half to the prosecutor, to be levied by distress, by warrant of such justice. 9 & 10 *W.* 3, *c.* 7, *s.* 2.

Conviction as in ordinary cases:—*On* —— *at* ——, *unlawfully did sell unto one I. K. certain fire-works, to wit, five squibs; against the form of the statute in such case made and provided. Whereupon*, &c.

Throwing them in a highway.] "If any person or persons shall make or assist in making any fire or fires commonly called bonfires, or shall set fire to, or wantonly let off or throw any squib, rocket, serpent, or other fire-work whatsoever," within

eighty feet of the centre of any turnpike road: penalty, not exceeding 40*s.* over and above the damages occasioned thereby. 3 *G.* 4, *c.* 126, *s.* 121. *See tit.* "*Highway.*"

And upon ordinary carriage or cartways, not being turnpike roads, "if any person shall make or assist in making any fire, or shall wantonly fire off any gun or pistol, or shall set fire to, or wantonly let off or throw any squib, rocket, serpent, or other fire-work whatsoever," within fifty feet of the centre of the way: penalty, not exceeding 40*s.* over and above the damage occasioned thereby. 9 & 10 *Vict. c.* ———. *See tit.* "*Highway.*" The stat. 9 & 10 W. 3, c. 7, ss. 2, 3, also, inflicted the penalty of 20*s.* for throwing or firing any squibs or fire-works into any "public street, shop, river, highway, road or passage."

FISH.

See "*Larceny,*" "*Malicious Injuries.*"

FISH POND.

See "*Malicious Injuries.*"

FISHERIES.

1. *Salmon fisheries.*
2. *Fisheries in particular rivers,* p. 463.
3. *Taking, &c. fry, and fish under size,* p. 463.
4. *Other fisheries,* p. 464.

1. *Salmon Fisheries.*

Conservators to be appointed.] The justices assembled at any general or quarter sessions, may from time to time "appoint conservators or overseers, for the preservation of the salmon and fish of the salmon kind, and the brood, spawn, and fry thereof, and preventing the destruction thereof, and enforcing for that purpose the provisions of this Act within the limits of the jurisdiction of such justices, and within the limits of which they shall be so appointed." 58 *G.* 3, *c.* 43, *s.* 1.

Time limited for fishing.] Where no provision is made by any particular statute for limiting the times within which it shall be lawful to take salmon or fish of the salmon kind in

any of the rivers in England, the justices at quarter sessions shall, at the request of any person (such person having first given notice, in some newspaper usually circulated within the county, of his intention, to apply to the said court of quarter sessions in that behalf), to fix certain days, not exceeding 150 days in each year, for each river within their respective counties, to be fence days for the several rivers respectively, during which time it shall not be lawful for any person whatever to take, kill, or destroy any salmon or salmon trout, or fish of the salmon kind, or any brood, spawn, or fry of such fish; and the said justices are further empowered, at any general quarter sessions, to vary annually the number of such days, and the periods at which they shall commence. *Id. s.* 2.

And where a river shall form the boundary of two adjoining counties, it shall be lawful for the justices of the peace acting for either of such counties, at their quarter sessions of the peace, upon the refusal or neglect of the justices of the peace acting for such other adjoining county to fix certain days, according to the provisions of stat. 58 G. 3, c. 43, to be fence days for such part of any such river, themselves to fix certain days as fence days, during which it shall not be lawful for any person or persons whatsoever to take, kill, or destroy, or attempt to take, kill, or destroy any salmon, salmon trout, or fish of the salmon kind, or any brood, spawn, or fry of such fish, in any portion of such river as runs between or forms the boundary of such two counties. *6 & 7 Vict. c.* 33, *s.* 3. And in case the justices of the peace acting for such two adjoining counties should not fix the same days as fence days for such part of any river as runs between or forms the boundary of the two counties, the clerk of the peace for each county respectively shall give notice to the clerk of the peace of the county next adjoining through which the lower course of the river shall entirely pass, or if there shall be no such county, then to the clerk of the peace of the county next adjoining through which the upper course of the river shall entirely have passed, of the days which have been proposed as fence days by the justices of the peace for such two adjoining counties as aforesaid; and it shall thereupon be lawful for the justices of the peace acting for such next adjoining county through which the course of the river shall entirely pass or have passed, as the case may be, and they are hereby required, at their next quarter sessions, to fix certain days as fence days for any part of such river as runs between or forms the boundary of such adjoining counties: provided always, that the first of such fence days shall be some day between the days proposed by such adjoining counties for the commencement of such fence days, and the last of such days shall be a day between the days proposed by the said adjoining counties for the determination of such fence days. *Id. s.* 4.

Taking, &c. spawn, fry, fish, under size or out of season.] No person shall, upon any pretence whatsoever, at any time after the days to be fixed by any justice or justices of the peace to be fence days by virtue of the provisions of this Act, take, kill, or destroy,—or have in his or her possession, either on the water or on the shore, or shall bring to shore, or cry or carry about, sell, offer, or expose to or for sale, or shall exchange for any goods, matter, or thing,—any spawn, fry, or brood of fish, or any unsizeable fish, or any kepper or shedder salmon being unseasonable salmon, commonly called old salmon, or any salmon caught in any river during the periods when fishing for salmon is prohibited under the provisions of any law now in force, or when the same shall be prohibited by any order to be made by the justices at their sessions, as provided by stat. 58 G. 3, c. 43, or by any order to be made by the justices at their sessions or otherwise as herein-before provided; and it shall be lawful for any conservator or overseer thereof, or any other person, under the authority of stat. 58 G. 3, c. 43, or of this Act, to take and seize all or any such spawn, fry, or brood of fish, or such other fish as aforesaid, wherever the same shall be found, together with all baskets and package in which the same shall be so found or taken, and to deliver the person on whom the same may be found to a constable or other peace officer; and after every such seizure shall be made, the spawn, fry, or brood, or other fish as aforesaid, together with the baskets and package in which the same shall be so seized, shall be delivered into the hands of some constable or other peace officer, and every such constable or other peace officer is hereby authorized and required to take every such offender with whom he shall be so charged for any such offence into his custody, and also the spawn, fry, or brood of fish, and such other fish as aforesaid, and all baskets and packages in which the same shall be so seized, and which shall be delivered to such constable or other peace officer as aforesaid, and to carry such offender, and all such spawn, fry, or brood of fish, and such other fish as aforesaid, together with the baskets and package as aforesaid, which shall have been delivered to any such constable or other peace officer, with all convenient speed, before some justice or justices or magistrate of the county, city, or place where the offence shall be committed, for such offender to be dealt with according to law; and on the conviction of any such offender or offenders for any such offence before any such justice or justices or magistrate as aforesaid, every such offender shall forfeit all and every such spawn, fry, or brood of fish, unsizeable fish, and fish out of season, which shall be so seized, together with all baskets or package in which the same shall be so seized; and all such spawn, fry, or brood of fish, or such other fish as aforesaid, together with such baskets and package in which the

same shall have been so seized as aforesaid, shall, by order of the justice or justices before whom the same shall be so brought, be delivered to the person or persons who shall have so seized the same and shall prosecute to conviction any such offender: and every offender who shall be so convicted as aforesaid of any such offence shall besides forfeit and pay for every such offence any sum not exceeding ten pounds nor less than five pounds. 6 & 7 *Vict. c.* 33, *s.* 7.

Destroying salmon, or fry, &c. with lime, &c.] If any person shall "pursue, take, kill, or destroy, or seek or endeavour to take, kill, or destroy, pursue, hurt or injure any salmon or salmon kind, by laying or using any hot lime or filth, or material or drug pernicious to fish, or using any water in which any green lint or flax has been steeped, or letting off stagnated water, or any water impregnated with any material or drug pernicious to fish; or if any person shall use or employ any such means as aforesaid, or use any fire or light, or white object, or lay down any kind of net, engine, or device, or wilfully do or commit, or cause to be done or committed any act whatsoever, in any river, water, rivulet, stream, mill dam, mill sluice, cut, pool or pond communicating therewith, for the destruction of the brood, spawn or small fry or salmon therein, (angling excepted);—or if any person shall hereafter make, erect or set any bank, dam, hedge, or stank, net, or nets, or place any fire or fires, light or lights, or any white object or objects, so that the young fry or young salmon be prevented from going down from such rivers, rivulets or other waters communicating therewith as aforesaid, or any of them;"—penalty, for a first offence not exceeding 10*l.* nor less than 5*l.*, and for a second offence not more than 15*l.* nor less than 10*l.*, and the offender shall also forfeit all the fish, spawn, brood, or fry so taken, and all the nets, weapons, lines, instruments, boats, devices, or things used in the taking thereof. 58 *G.* 3, *c.* 43, *s.* 3.

This Act, however, shall not extend "to legalize nor to demolish, take away or destroy any net, fish lock, coop, bay, or other work, which shall have been or may hereafter be lawfully erected, put, placed, fixed, or used in any arm of the sea, or estuary or mouth of any river, or in or upon any bank, sand, or shore thereof, or near thereto, or in or near any river, rivulet, brook or stream, pond, pool, or other water, mill-lead, mill-dam, sluice, or cut, which runs into or otherwise communicates therewith, or to the present modes or methods used for taking and killing fish therein, other than and as are in this Act particularly prohibited. *Id. s.* 5.

Proceedings for penalties.] Offences against this Act, to be heard and determined by one or more justices of the peace of the county, &c. wherein the offender shall be or reside, or

wherein or near to which the offence shall be committed. 58 *G.* 3, *c.* 43, *s.* 6. And any offence against the provisions of the said recited Acts or of this Act, committed by any person whatsoever in such part of any river as runs between or forms the boundary of two adjoining counties, shall be cognizable by any justice or justices of the peace, as the case may require, acting for either one of such counties. 6 & 7 *Vict. c.* 33, *s.* 5.

Upon information of an offence, being made upon oath, he may grant his warrant to have the offender brought before him, or some other justice; or upon information without oath, he may grant a summons, and if the party fail to appear, the justice may then grant a warrant. 58 *G.* 3, *c.* 43, *s.* 7. So, he may grant a summons for any witness to prove the offence. *Id.* And owners or occupiers of the fisheries, or persons interested therein, are competent witnesses for that purpose. *Id. s.* 8.

The conviction shall be in the following form, or to that effect; and shall not be deemed insufficient for want of form, nor liable to be removed by *certiorari*. *Id. s.* 10.

Be it remembered, that on the —— day of ——, in the year ——, A. B. was, upon the complaint of C. D., convicted before me one of Her Majesty's justices of the peace for ——, in pursuance of an Act made in the fifty-eighth year of the reign of His late Majesty King George the Third [insert the title of the Act,*] *for that the said ——* [state the offence, and if a case in which different penalties are imposed for repeated offences, "*this being the first offence,*" or "*second,*" or "*third offence,*" as the case may be]: *and I do hereby adjudge him* [*her* or *them*] *to pay and forfeit for the said offence, the sum of ——, of lawful money of Great Britain, together with the further sum of ——, for costs of suit and prosecution, to the said C. D. Given under my hand and seal, at ——, in the county of ——, the day and year first above written.*

If the party do not immediately pay the penalty and costs into the hands of the justice, or other person authorized to receive the same, the justice may order any constable to take charge of and keep him in custody, and may thereupon by his warrant commit him to the common gaol or house of correction for the county, &c., for the time hereinafter mentioned, unless the penalty, &c., shall be sooner paid; or he may by his warrant levy such penalty and costs by distress, to be distributed, half to the informer, and the other half (after payment of the charges of prosecution, &c.) to the poor of the parish where the offence was committed; or if sufficient distress be not found, or the penalty and costs be not immediately paid, the justice may commit the offender, for a first offence, for not more than four nor less than two months,—for a second

* "An Act for preventing the destruction of the breed of salmon and fish of salmon kind in the rivers of England."

offence, not more than eight nor less than six months,—and for a third or other offence, not more than twelve nor less than eight months, there to be kept to hard labour. *Id. s.* 6.

Any person aggrieved by the judgment of any justice of the peace as aforesaid, may appeal to the next general quarter sessions of the county, &c., if within ten days after the judgment, and twenty days before the sessions, he give and leave a written notice of appeal at the office of the clerk of the peace, and to the person or at the dwelling-house of the informer or prosecutor, and shall also enter into a recognizance before such justice in a sum not exceeding 20*l.*, conditioned to try such appeal, and to pay costs, (if judgment be given against him) within ten days after the determination thereof; and the justices at session may award costs to either party: and if not paid within ten days after the hearing of the appeal, they may be levied by distress. *Id. s.* 12.

Nothing in this Act shall extend to or alter any Act or provision for the regulation of any fishery in any county, arm of the sea, &c.; *Id. s.* 14; or affect the rights of any lord of a manor; *Id. s.* 15; or prejudice the rights of any body politic, corporate or collegiate. *Id. s.* 16.

2. *Fisheries in particular rivers.*

The salmon fisheries in the rivers Teign, Dart and Plym, are regulated by stat. 48 G. 3, c. lxi.

The salmon fisheries in the rivers Humber, Nid, Yore, Tine, and Eden, by stat. 13 Ed. 1, stat. 1, c. 47. 13 R. 2, st. 1, c. 19.

The salmon fisheries within the counties of Southampton and Wilts, by stat. 4 Ann. c. 21.

The fisheries in the rivers Thames and Medway, by stat. 30 G. 2, c. 21. 9 Ann. c. 26. 17 R. 2, c. 9. 13 R. 2, st. 1, c. 19. *See* 12 *Ad.* & *El.* 13.

The fisheries in the rivers Severn and Verniew, by stat. 18 G. 3, c. 33. 30 C. 2, c. 9.

The fisheries in the county and borough of Carmarthen, by stat. 45 G. 3, c. xxxiii.

3. *Fry, or fish under size.*

Persons taking or knowingly having in their possession, either in the water or on shore, or selling or exposing to sale, any spawn, fry or brood of fish, or any unsizeable fish, or fish out of season, or any smelt not five inches long, penalty 20*s.*, and forfeiture of the fish and packages; which penalty may be levied by distress, and given half to the prosecutor and half to

the poor of the parish where the offence was committed; and in default of distress, the offender may be committed to the house of correction, there to be kept to hard labour for not more than three months. 33 *G.* 2, *c.* 27, *s.* 13, &c.

The form of conviction given by the statute, is thus: *Be it remembered, that on this —— day of ——, in the —— year of the reign of Queen Victoria, A. B. is convicted before me ——, one of Her Majesty's justices of the peace for ——, of* ——; and I do adjudge him to pay and forfeit the sum of ——. Given under my hand and seal the day and year above said.* The blank after the asterisk,* is seemingly left for a statement of the offence.

4. *Other fisheries.*

The herring fishery, is regulated by stat. 48 G. 3, c. 110. 55 G. 3, c. 94. 1 & 2 G. 4, c. 79. 5 G. 4, c. 64. 7 G. 4, c. 34. 1 W. 4, c. 54.

The lobster fishery, by stat. 9 G. 2, c. 33.

Fishing in the sea, by stat. 3 J. 1, c. 12. 1 G. 1, st. 2, c. 18. 33 G. 2, c. 27, s. 11.

As to stealing fish, dredging for oysters in the oyster beds of another, &c., see *post, tit.* "*Larceny.*"

FIXTURES.

See "*Larceny.*"

FLOUR.

See "*Bread and Flour.*"

FORCIBLE ENTRY AND DETAINER.

Forcible entry, what and how punishable.] By *stat.* 5 *Ric.* 2, *c.* 7, "the king defendeth, that none from henceforth make any entry into any lands and tenements, but in case where entry is given by the law; and in such case, not with strong hand, nor with multitude of people, but only in peaceable and easy manner: and if any man from henceforth do to the contrary, and thereof be duly convict, he shall be punished by imprisonment of his body, and thereof ransomed at the king's

will." This extended only to freeholds; but by 21 Jac. 1, c. 15, it has been extended to terms for years and copyholds.

An entry may be said to be forcible, not only in respect of a violence actually done to the person of a man, as by beating him if he refuse to relinquish his possession, but also in respect of any other kind of violence in the manner of entry, as by breaking open the doors of a house, whether any person be in it at the time or not, especially if it be a dwelling-house. 1 *Hawk. c.* 64, *s.* 26. So, wherever a man, either by his behaviour or speech, at the time of his entry, gives those who are in possession of the tenements he claims, just cause to fear that he will do them some bodily hurt if they will not give way to him: his entry is deemed forcible, whether he cause such terror, by carrying with him such an unusual number of servants, or by arming himself in such a manner, as plainly intimates a design to back his pretensions by force; or by actually threatening to kill, maim or beat those who shall continue in possession; or by making use of such speeches as plainly imply a purpose of using force against those who shall make any resistance; or the like. 1 *Hawk. c.* 64, *s.* 27. *And see Milner* v. *Maclean*, 2 *Car. & P.* 17. But no entry shall be deemed forcible, from any threat to spoil another's goods, or to destroy his cattle, or to do him any other damage which is not personal. 1 *Hawk. c.* 64, *s.* 28. So, an entry into a house through a window, or by opening a door with a key, is not forcible, *Id. s.* 26, unless accompanied with circumstances of violence or terror, such as have been above mentioned. Nor can a mere trespass be deemed a forcible entry. *R.* v. *Smyth*, 5 *Car. & P.* 201. So if one, who pretends title to lands, barely go over them, in his way to church or to market, or for the like purpose, without doing any act which either expressly or impliedly amounts to a claim to such lands, he cannot be said to make an entry therein within the meaning of the statutes, although he be accompanied at the time by a great number of attendants, or armed. 1 *Hawk. c.* 64, *s.* 20. Yet in such a case, if he make an actual claim, with any circumstances of force or terror, he seems to be guilty of a forcible entry within stat. 5 *R.* 2, *c.* 7, whether his adversary actually quit the possession or not. *Id. s.* 21.

It may be necessary to mention, that a joint tenant or tenant in common may offend against the statutes, either by forcibly ejecting or forcibly holding out his companion; for although the entry of such a tenant be lawful, so that no action of trespass will lie against him for it, yet the lawfulness of his entry in no way excuses the violence, or lessens the injury done to his companion. 1 *Hawk. c.* 64, *s.* 33.

All who accompany the person making a forcible entry, shall be deemed equally guilty, whether they actually enter upon the lands or not. 1 *Hawk. c.* 64, *s.* 22. But a man who barely

agrees to a forcible entry, already made to his use, without his knowledge or privity, is not guilty, for he in no way concurred in or promoted the force. *Id. s.* 24.

Commitment:—*On —— at ——, forcibly and with strong hand did enter into a certain messuage with the appurtenances there situate, of which one C. D. was then* [*seised in his demesne as of fee*, or *possessed for a certain unexpired term of years*], *and the said C. D. from the peaceable possession of the said messuage with the appurtenances aforesaid, forcibly and with strong hand unlawfully did expel and put out; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Where a man remains in the occupation and quiet possession of the lands, &c., for three years after his forcible entry into them, restitution shall not be awarded; 31 *El. c.* 11; although he may be indicted for the forcible entry.

Forcible detainer.] The same circumstances of violence or terror, which will render an entry forcible, will make a detainer forcible also. 1 *Hawk. c.* 64, *s.* 30. From whence it seems to follow, that whoever keeps in his house an unusual number of people, or unusual weapons, or threatens to do some bodily hurt to the former possessor, if he dare return, shall be adjudged guilty of a forcible detainer, though no attempt be made to re-enter; and it hath been said, that he also shall come under the like construction, who places men at a distance from the house, in order to assault any one who shall attempt to make an entry into it; and that he also is in like manner guilty, who shuts his doors against a justice of peace coming to view the force, and obstinately refuses to let him come in. *Id.* But it is said, that a man ought not to be adjudged guilty of this offence, for barely refusing to go out of a house, and continuing therein in despite of another. *Id.*

Forcible detainer, is punishable in the same manner as forcible entry. *See* 8 *H.* 6, *c.* 9.

Commitment:—*On —— at ——, unlawfully did enter a certain messuage with the appurtenances there situate, of which one C. D. was* [*seised in his demesne as of fee*, or *possessed for a certain unexpired term of years,*] *and the said C. D. from the peaceable possession of the said messuage, with the appurtenances aforesaid, then and there did unlawfully expel and put out: and that the said A. B. then and there, and from thence hitherto, the said C. D., from the possession of the said messuage with the appurtenances aforesaid, with force and arms and with strong hand, unlawfully and injuriously did keep out, and the said messuage and appurtenances and the possession thereof then and there unlawfully and forcibly did hold and detain, and still doth hold and detain, from the said C. D.; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Formerly, upon a charge either of forcible entry or forcible detainer, the party kept out of possession was not a competent witness to prove the offence. *R.* v. *Beavan, Ry. & M.* 242, *R.* v. *Williams*, 9 *B.* & *C.* 549. But now, by stat. 6 & 7 Vict. c. 85, s. 1, no person shall be excluded from giving testimony, in cases civil or criminal, by reason of his being interested in the event of the proceeding, provided he be not a party to it, and actually named in the record. And as the Queen is in law the party prosecuting, the party kept out of possession, it should seem, is no longer incompetent. But it is very doubtful if he can be a witness in the proceedings before justices upon view, treated of *infra*. In *R.* v. *Williams*, *supra*, it was also decided that the defendant cannot impeach the title of the party dispossessed.

2. *Proceedings by Justices, upon view.*

Proceedings upon view.] By stat. 15 Ric. 2, c. 2. (after referring to the stat. 5 Ric. 2, already mentioned *ante*, p. 464,) it is enacted "that at all times that such forcible entries shall be made, and complaint thereof cometh to the justices of peace or to any of them, that the same justices or justice take sufficient power of the county, and go to the place where the force is made: and if they find any that hold such place forcibly, after such entry made, they shall be taken and put in the next gaol, there to abide convict by the record of the same justices or justice, until they have made fine and ransom to the king; and that all the people of the county, as well the sheriff as others, shall be attendant upon the same justices, to go and assist the same justices to arrest the offenders, upon pain of imprisonment and to make fine to the king; and in same manner it shall be done of them that make such forcible entries in benefices or offices of holy church."

As this statute did not extend to forcible detainers after a peaceable entry, nor to a forcible detainer after a forcible entry, unless the party were found upon the premises by the justice; to remedy this, it was enacted by stat. 8 H. 6, c. 9, (after referring to the above stat. 15 R. 2), that "when any doth make any forcible entry in lands and tenements or other possessions, or them hold forcibly,—after complaint thereof made within the same county where such entry is made, to the justices of the peace or to one of them, by the party grieved, that the justices or justice so warned, within a convenient time, shall cause the statute to be executed, and that at the costs of the party so grieved."

When complaint therefore is made to a justice of peace, of a forcible entry and detainer, the justice shall go to the house or other place mentioned, and there upon his own view shall

ascertain whether the place is holden by force against the former possessor or not: *see ante*, pp. 465, 466: if he be satisfied that it is, he must then summon the offender to appear before him forthwith and answer to the charge. And whether he appear or not, he must then examine witnesses, to ascertain the nature of the defendant's entry, and whether it was by force or in other manner unlawful: for if that were peaceable and lawful, it is no offence in the defendant to keep his possession by force. *R.* v. *Wilson*, 1 *Har.* & *W.* 387, 3 *Ad.* & *El.* 817. If he be satisfied that the entry was unlawful, and that the detainer is by force, he shall make a record of the force, and issue his warrant for the apprehension and commitment of the offenders. The form of the record may be thus:—

Berkshire, to wit: Be it remembered, that on this —— day of ——, in the —— year of the reign of our sovereign Lady Victoria by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, at the parish of ——, in the county aforesaid, A. B. cometh before us, J. P. and L. M. esquires, two of the justices of our said Lady the Queen assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, and complaineth unto us, that he the said A. B. on ——, in the year aforesaid, in the county aforesaid, was possessed of a certain dwelling-house with the appurtenances there situate [for a certain term of years then and still unexpired]; and that the said A. B. being so possessed, one C. D., late of the parish aforesaid in the county aforesaid, yeoman, E. F. late of the same place, labourer, and G. H. late of the same place, labourer, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, into the said dwelling-house with the appurtenances with force and arms and with strong hand unlawfully and forcibly did enter, and the said A. B. from the peaceable possession of the said dwelling-house and appurtenances then and there with force and arms and with strong hand unlawfully did expel and put out; and the said A. B., being so unlawfully expelled and put out from the said dwelling-house and appurtenances as aforesaid, they the said C. D., E. F. & G. H. from the day and year last aforesaid hitherto, from the said dwelling-house with the appurtenances aforesaid with force and arms and with strong hand unlawfully and injuriously then and there did keep out and still do keep out, and the said messuage with the appurtenances and the possession thereof then and there unlawfully forcibly and with strong hand did hold and still do hold from the said A. B.; against the form of the statutes in such case made and provided: whereupon the said A. B. prayeth us, the justices aforesaid, personally to go to the messuage and appurtenances aforesaid where the said force is made, and to proceed in this behalf according to the form of the statutes in such case made and provided. Whereupon we the said justices have now, on the

day and year first aforesaid, come to the said dwelling-house and appurtenances situate as aforesaid, and having viewed the same, we now here find that the said C. D., E. F., & G. H., now, with force and arms and with strong hand, unlawfully and injuriously do keep the said A. B. out of possession of the said dwelling-house with the appurtenances, and with force and arms and with strong hand unlawfully and forcibly do hold the same from the said A. B. And the said C. D., E. F., & G. H., though duly summoned to appear before us the said justices to answer to the charge aforesaid, do not nor doth any of them appear before us pursuant to the said summons: nevertheless we the said justices do now proceed to examine into the truth of the charge so made against the said C. D., E. F. & G. H. in and by the complaint aforesaid; and now here, one credible witness, to wit, I. K. of ——, upon his oath deposeth and saith that [here set out the evidence, as in an ordinary conviction; and this evidence must prove that the entry of the defendants was either by force, or in some other manner unlawful. R. *v.* Wilson, 1 Har. & W. 387.] *Therefore, it manifestly appearing unto us the said justices that the said C. D., E. F. & G. H. are guilty of the offence so charged against them as aforesaid, we do hereby convict them and every of them of the said offence; and it is hereby considered and adjudged by us, that the said C. D. do pay unto our Lady the Queen for the offence aforesaid the fine and ransom of ——, and that the said E. F. do pay unto our Lady the Queen for the offence aforesaid the fine and ransom of ——, and that the said G. H. do pay unto our Lady the Queen for the offence aforesaid the fine and ransom of ——; and it is further considered and adjudged by us the said justices, that the said C. D., E. F. & G. H. be severally and respectively imprisoned in Her Majesty's gaol, at ——, (being the next gaol to the dwelling-house and appurtenances aforesaid,) there to abide convicted by this record, until they shall have severally and respectively paid unto our Lady the Queen the respective fines and ransoms aforesaid. In witness whereof we the said justices have hereunto set our hands and seals, at ——, this —— day of —— in the year aforesaid.*

It is not necessary in this record to set out the particular facts presented to the view of the justices when they are viewing the force. *R.* v. *Wilson*, 1 *Adolph.* & *El.* 627. But although the conviction in this case is for a forcible detainer only, the record must state the previous entry of the defendant to be unlawful, *R.* v. *Oakley* 4 *B.* & *Ad.* 307, and must set out the evidence showing it to be so. *R.* v. *Wilson*, 1 *Har.* & *W.* 387. The record also must show that the defendants have been summoned. *Id.*

The warrant of commitment, may be in this form:—

Berkshire: To the constable of ——, in the said county, and to R. S. [&c.], *and to the keeper of Her Majesty's gaol at ——, in the said county.*

Whereas upon complaint by A. B. made to me J. P. and to L. M. esqr., two of Her Majesty's justices assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, that he the said A. B. [&c. stating the charge, as in the above record, to the words "*against the form of the statutes in such case made and provided:*"] *whereupon we the said justices went to the premises, and it manifestly appearing unto us, as well upon our own view as from evidence adduced to us in that behalf, that the said C. D., E. F. & G. H. were guilty of the said offence, they were convicted before us the said justices of the same; and we the said justices thereupon adjudged that the said C. D. should pay unto our Lady the Queen for the offence aforesaid the fine and ransom of £——, and that the said E. F. should pay unto our said Lady the Queen for the offence aforesaid the fine and ransom of ——, and that the said G. H. should pay unto our said Lady the Queen for the offence aforesaid the fine and ransom of ——, and that they the said C. D. E. F. & G. H. should severally and respectively be imprisoned in Her Majesty's gaol at ——, there to abide until they should severally and respectively have paid the respective fines and ransoms aforesaid. And whereas the said C. D., E. F. & G. H. have not nor hath any of them paid the respective fines and ransoms aforesaid. These are therefore to command you the said constable and the said R. S.* [&c.] *and every of you to take the said C. D., E. F. & G. H., and them safely to convey to Her Majesty's gaol at ——, aforesaid, and there to deliver them to the said keeper thereof, together with this precept; and I do hereby command you the said keeper of the said gaol, to receive the said C. D., E. F. & G. H. into the said gaol, there to imprison them respectively until they shall severally and respectively pay the said respective fines and ransoms aforesaid; and for your so doing, this shall be your sufficient warrant. Given under my hand and seal, at —— in the county aforesaid, this —— day of —— in the —— year of the reign of our sovereign Lady Queen Victoria.*

Inquest and restitution.] By the proceeding upon view, which we have just considered, the justices could only punish the offending party. But it was thought necessary, also, to give them authority to restore the possession of the premises to the party who was forcibly put or kept out of them; and therefore by stat. 8 H. 6, c. 9, whether the parties making such entries be present or not, at the time of the coming of the justice, the said justice, in some good town next to the tenements so entered, or in some other convenient place, may "inquire by the people of the same county, as well of them which make such forcible entries in lands and tenements, as of them which the same hold with force; and if it be found before him that any doth contrary to this statute, then the said justice shall cause

to re-seise the lands and tenements so entered and holden as afore, and shall put the party so put out in full possession of the said lands and tenements so entered or holden as before." For this purpose, the justice directs his precept to the sheriff of the county, &c., commanding him to summon and return a jury; *Id.*; which precept may be in this form:—

Berkshire to wit: J. P., esq., one of the justices of our Lady the Queen, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed,—to the sheriff of the said county greeting: I command you that you cause to come before me, on —— at ——, twenty-four sufficient and indifferent men of your bailiwick, dwelling next about the dwelling-house and appurtenances of A. B. at ——, whereof every man shall have land or tenement of the yearly value of forty shillings by the year at least above reprizes, to inquire upon their oaths for our said Lady the Queen, of a certain entry with force and arms and with strong hand lately made (as it is said) into the dwelling-house of A. B. at ——, with the appurtenances, against the form of the statutes in such case made and provided; and that you do return issues upon every of them of twenty shillings, on the day aforesaid; and that you have there then the names of the said jurors, and this precept. Witness the said J. P., esquire, at ——, the —— day of ——, in the —— year of the reign of our sovereign Lady Victoria.

The justice should then issue his summons to the defendants, warning them to appear before him, "*and the inquest in this behalf, to hear and make answer to such things as may be objected against them, that they on —— at ——, with force and arms and with strong hand, unlawfully entered the dwelling-house with the appurtenances of A. B. there situate, and expelled him the said A. B. from the same, and the said A. B. from thence hitherto from the possession of the same unlawfully with force and arms and with strong hand have kept out and still keep out, and have held and still forcibly hold the same against the said A. B.; against the form of the statute in such case made and provided.*

At the day and place appointed, the justice must attend, and the jurors are then called and sworn; the oath is administered nearly in the same way as to a grand jury, thus:—"*You as foreman of this inquest, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge, concerning a certain entry with force and arms and with strong hand lately made (as it is said) into the dwelling-house with the appurtenances of A. B. at —— in this county; you shall present no man for envy, hatred or malice, neither shall you leave any man unpresented for fear, favour or affection, or hope of reward; but you shall present all things truly, as they come to your knowledge, according to the best of*

your understanding: so help you God." The remaining jurors are then sworn, thus:—"*The same oath which your foreman has taken upon his part, you and every of you shall well and truly observe and keep on your parts: so help you God.*"

The evidence is then adduced, both on the part of the prosecutor, and of the defendants if they choose to do so, and the jury find accordingly. And it will be a sufficient defence for the defendant, to prove that he or his ancestor has been in possession for three years; 8 *H.* 6, *c.* 9, *and see* 31 *El. c.* 11; but he cannot impeach the title of the party whom he has dispossessed. *Ante*, p. 467. An inquisition, embodying the finding, is then engrossed on parchment, and is signed and sealed by each of the jury, and by the justice, in the same manner as an inquisition taken before a coroner; which inquisition is afterwards kept by the justice, unless it be removed into the court of Queen's Bench by certiorari. The following may be the form:—

Berkshire, to wit: An inquisition indented, taken at —— on ——, before J. P., one of the justices of our Lady the Queen, assigned to keep the peace in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, by virtue of the statute in such case made and provided, to inquire of a certain forcible entry into the dwelling-house of A. B., and forcibly holding and detaining the same from him, by the oath of S. T., R. S., P. R., [&c. setting out the names of the jurors], *good and lawful men of the said county, who upon their oath say that before and at the time of the committing of the offence hereinafter mentioned, the said A. B. was* [*possessed of the said dwelling-house with the appurtenances, situate and being in the parish of —— in the county of Berks aforesaid for a certain term of years then and still unexpired,*" or "*seised in his demesne as of fee of and in the said dwelling-house with the appurtenances, situate and being in the parish of —— in the county of Berks aforesaid*], *and that the said A. B. being so possessed* [or *seised*], *C. D., E. F., and G. H., on —— at ——, into the said dwelling-house with the appurtenances there situate, with force and arms and with strong hand unlawfully and forcibly did enter, and the said A. B. from the peaceable possession of the said dwelling-house and appurtenances then and there with force and arms and with strong hand unlawfully did expel and put out; and the said A. B., being so unlawfully expelled and put out from the said dwelling-house and appurtenances as aforesaid, they the said C. D., E. F., and G. H. from the day and year last aforesaid until the day of the taking of this inquisition from the said dwelling-house with the appurtenances aforesaid with force and arms and with strong hand unlawfully and injuriously then and there did keep out and still do keep out; against the form of the statute in such case made and provided. In witness whereof, as well I the said jus-*

tice, as the said jurors, have set our seals to this inquisition, the day and year first above written.

An inquisition of forcible entry before justices on view, must mention what estate the complaining party has in the premises, in order to show that he is within the statutes upon the subject; and therefore where an inquisition stated that A. B., being the duly authorized agent of C. D., was possessed of, &c. without mentioning what estate C. D. had in the premises, Coleridge, J. held it bad. *R.* v. *Bowser*, 8 *Dowl.* 129.

Upon this inquisition being found, if the defendants will quietly deliver up the tenements in question, the justice may at once put the complainant into peaceable possession of them; in which case he makes an indorsement on the inquisition of his having done so. But if the defendants still persist in their detainer, the justice or justices, before whom the inquisition was taken, may issue their warrant to the sheriff of the county, &c., commanding him to re-seize the premises, and restore them to the complainant; of the issuing of which warrant, and of what shall be done under it, the justice will indorse a memorandum on the inquisition. In executing this warrant, the sheriff may take such force of the body of his county, &c., as he may deem necessary; *see* 15 *R.* 2, *c.* 2; and he may break open doors, if necessary, after having first demanded admission. *Dalt. c.* 44. The following may be the form of the warrant:—

Berkshire, to wit: J. P., esquire, one of the justices of our sovereign Lady the Queen, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed,—to the sheriff of the said county, greeting: Whereas by an inquisition indented and taken before me, the said J. P. at ——, on ——, by the oaths of [naming the inquest], *it was found that* [&c. here set out the finding of the inquest, as in the inquisition, but in the past tense, to the words] *against the form of the statutes in such case made and provided; as by the said inquisition more fully and at large appears. Therefore in pursuance of the statutes in such case made and provided, I hereby, on behalf of our sovereign Lady the Queen, do charge and command you, the said sheriff, that, taking with you the power of your county, if it be needful, you go unto the said dwelling-house, and that you re-seize the same with the appurtenances, and that you put the said A. B. in full possession of the same. Herein fail you not. Given under my hand and seal, at ——, the —— day of ——, in the —— year of the reign of our sovereign Lady Queen Victoria.*

It may be necessary to mention, that by stat. 8 H. 6, c. 9, already mentioned, it is enacted, that mayors, justices of the peace, sheriffs, and bailiffs of cities, towns and boroughs, having franchise, shall have in the said cities, towns and boroughs,

like power to remove such entries, and in other articles aforesaid, arising within the same, as justices of peace and sheriffs in counties and countries aforesaid have.

FOREIGN SERVICE.

Engaging in foreign military service, without licence.] If any natural born subject, without leave or licence under the sign manual, or signified by order in counsel or proclamation, shall accept or agree to accept any military commission, or enter into the military service as a commissioned or non-commissioned officer, or shall enlist or agree to enlist as a soldier, or to be employed in or shall serve in any military or warlike operation, for or in the service of any foreign prince, state, potentate, colony, province, or part of a province, or of any person assuming to exercise the powers of government in or over any foreign country: misdemeanor, fine or imprisonment or both, at the discretion of the court. 59 *G.* 3, *c.* 69, *s.* 2.

Commitment:—*On* ——, *at* ——, *being then and there a natural born subject of Her Majesty Queen Victoria, did unlawfully and without any leave or licence in that behalf, enter into the military service of a certain foreign state, to wit, of* ——, *as a commissioned officer, to wit, as a captain; against the form of the statute in such case made and provided. And you, the said keeper*, &c.

The like in the naval service.] If any natural born subject, without such leave or licence as aforesaid, shall accept or agree to accept an appointment as officer, or agree to enter himself as sailor or marine, to serve in any vessel of war, or ship to be used for any warlike purpose, for or in the service of any foreign power, prince, state, potentate, colony, province or part of a province, or of any person assuming to exercise the powers of government in or over any foreign country: misdemeanor, fine or imprisonment or both. 59 *G.* 3, *c.* 69, *s.* 2. The commitment may readily be framed, from the form under the last head.

Going abroad for the purpose of enlisting, &c.] If any natural born subject, without such leave or licence as aforesaid, shall go or agree to go to any foreign country, in order to enlist or serve in any warlike operation, whether by land or sea, in the service of any foreign prince, state, &c., either as officer, soldier, sailor or marine, although no enlistment money,

pay or reward shall be given to or accepted by him: misdemeanor; fine or imprisonment or both. 59 G. 3, c. 69, s. 2.

Engaging, &c. others, in such service.] If any person, in any of Her Majesty's dominions or colonies, shall engage or endeavour to engage persons to enlist or serve in any such service, as officer, soldier, sailor or marine, for or under or in aid of any foreign prince, state, &c. or to embark from any of Her Majesty's dominions with such intent: misdemeanor, fine or imprisonment or both. 59 G. 3, c. 69, s. 2.

And every master of a vessel, knowingly taking or engaging to take them on board, shall forfeit 50*l.* for each person, to be recovered by action of debt, s. 10, and his ship may be seized and detained by the officers of the customs, until such penalty be paid," "or until the owner of such ship or vessel shall give good and sufficient bail by recognizance," before a justice of the peace, for the payment of such penalty. *Id.* s. 6.

Offenders to be apprehended, &c.] Any justice of the peace, residing at or near to any port where any such offence shall be committed, on information on oath of any such offence, may issue his warrant for the apprehension of the offender, and cause him to be brought before himself or any other justice of the peace; and the justice before whom he is brought may examine into the nature of the offence upon oath, and may commit such person to gaol, there to remain until delivered by due course of law, unless such offender shall give bail, to the satisfaction of the said justice, to answer to any information or indictment for the said offence. 59 G. 3, c. 69, s. 4.

Fitting out vessels of war for foreign states.] If any person, within Her Majesty's dominions, shall, without the leave and licence of Her Majesty as aforesaid, equip, furnish, fit out or arm any ship or vessel, or endeavour to do so, or be concerned in doing so, with intent that it shall be employed in the service of any foreign prince, state, &c. or with intent to cruise or commit hostilities against any foreign prince, state, &c. not at war with this country; or shall issue or deliver any commission for such ship or vessel, with intent that it shall be so employed: misdemeanor, fine or imprisonment or both, and the ship may be seized and forfeited. 59 G. 3, c. 69, s. 7.

Or if any person within Her Majesty's dominions, without such leave and licence, shall, by adding to the number of guns, or changing them for others, or by the addition of any equipment for war, be concerned in increasing or augmenting the warlike force of any ship or vessel of war in the service of any foreign prince, state, &c.: misdemeanor, fine or imprisonment, or both. *Id.* s. 8.

FORESTALLING, &c.

Forestalling, or the buying up of dead victual on its way to market; engrossing, or the buying of the like in gross, for the purpose of again selling in gross; and regrating, or the purchasing of the like in a market, for the purpose of afterwards selling the same in the same market or other market in the immediate neighbourhood:—were formerly punishable as a misdemeanor at common law. *See R.* v. *Waddington*, 1 *East*, 143, 166. 1 *Hawk. c.* 80, and also by statute. *See* 12 *G.* 3, *c.* 71. But now these offences, both at common law, and by statute, are wholly abolished by stat. 7 & 8 Vict. c. 24.

FORGERY.

1. *As to the seals or sign manual*, p. 477.
2. *As to private securities, &c.*, p. 477.
 Bills, checks, bank notes, wills, exchequer bills, India bonds, p. 477.
 Making or having paper for forged exchequer bills, p. 481.
 Deeds, bonds, receipts, orders for goods, &c. p. 482.
 Foreign instruments, p. 483.
3. *As to forged bank notes, bank note paper, &c.* p. 484.
 Forging bank of England notes, p. 484.
 Buying or having forged bank notes, p. 484.
 Making paper for forged bank notes, or moulds, p. 484.
 Making, having or using plates for bank notes, or blank notes, p. 485.
 Making other bankers' paper, or moulds, p. 486.
 Making, using, &c. plates for other banker's notes, p. 487.
 Making, using, &c. plates for notes of foreign bankers, &c. p. 488.
 Possession of them, what shall be deemed, &c. p. 488.
4. *As to the public funds, &c.* p. 488.
 Forging transfers of stock, or powers of attorney, p. 488.
 Forging the attestation of such power of attorney, p. 489.
 Personating the owner of stock, p. 489.
 Making false entries in the books, as to the public funds, p. 490.
 Making out false dividend warrants, p. 490.

5. *As to public documents*, p. 491.
Recognizances, fines, &c. in another's name, p. 491.
False entries in registers of baptism, &c. p. 491.
Making false entries in the copies sent to the registrar, p. 492.
6. *Prosecution of offences, &c.* p. 493.
Offences, where to be tried, &c. p. 493.
Principals and accessaries, p. 493.
Hard labour, &c. p. 493.

1. *Forgery of the Seals or Sign Manual.*

The seals or sign manual.] "If any person shall forge or counterfeit, or shall utter knowing the same to be forged or counterfeited, the great seal of the United Kingdom, his Majesty's privy seal, and privy signet of his Majesty, his Majesty's seals appointed by the 24th article of the union to be kept, used, and continued in *Scotland*, the great seal of *Ireland*, or the privy seal of *Ireland*:" treason, 1 *W.* 4, *c.* 66, *s.* 2, transportation for life or for not less than seven years, or imprisonment with or without hard labour for not more than four nor less than two years. 1 *Vict. c.* 84, *s.* 1.

The impression of the seal upon wax, and not the seal itself, is what is here meant. If a good seal be taken from an old instrument, and affixed to a forged one, it is doubtful if this be a counterfeiting of the seal, and treason. *See the cases cited*, 2 *Arch. P. A.* 229.

Commitment:—*On —— at ——, the great seal of the United Kingdom to a certain instrument, purporting to be a patent and grant from the crown, falsely, deceitfully and traitorously did forge and counterfeit; against the duty of his allegiance, and against the form of the statutes in such case made and provided. And you the said keeper*, &c.

2. *Forgery of Private Securities, &c.*

Bills, checks, bank notes, wills, exchequer bills, East India bonds.] If any person shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any exchequer bill or exchequer debenture, or any indorsement on or assignment of any exchequer bill or exchequer debenture;—or any bond under the common seal of the united company of merchants of England, trading to the East Indies, commonly called an East India bond, or any indorsement on or assignment of any East India bond;—or any note or bill of exchange of the governor and company of the bank of England, commonly called a bank note, a bank bill of exchange,

or a bank post bill, or any indorsement on or assignment of any bank note, bank bill of exchange, or bank post bill;—or any will, testament, codicil, or testamentary writing;—or any bill of exchange or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, or order for the payment of money:—with intent in any of the cases aforesaid, to defraud any person whatsoever, felony, 1 *W.* 4, *c.* 66, *s.* 3, transportation for life or for not less than seven years, or imprisonment with or without hard labour for not more than four nor less than two years. 1 *Vict. c.* 84, *ss.* 1, 2.

A cheque upon a banker, is a warrant or order for the payment of money, within the meaning of the above section, *see R.* v. *Carter, Car.* & *K.* 741, even although it be post-dated, *R.* v. *Taylor, Id.* 213, or although the name of the pretended drawer be written across the instrument, instead of at the end of it. *R.* v. *Smith, Id.* 700. So, an instrument in this form,—"Mr. Martin will be pleased to send by the bearer £10 on Mr. Hodge's account, as Mr. Hodge is very bad in bed, and cannot come himself; Martin Ralph, foreman, St. Austell Foundry:" was holden to be an order for payment of money, within this statute, although the person to whom it was directed was only clerk to the bankers, and the person by whom it purported to be drawn had no authority from Hodge to draw upon his bankers. *R.* v. *Vivian, Car.* & *K.* 719. So, a letter of credit from a house abroad upon a banker in this country, is a warrant for the payment of money within this act. *R.* v. *Raake,* 8 *Car.* & *P.* 626. So a forged pass of a discharged prisoner, enabling him to receive certain sums from the overseers of the poor of the different parishes he will have to pass through on his route to the place of his settlement,—is an order for the payment of money, within the Act; and where a woman presented to an overseer such a forged pass, which directed the money to be paid to Wm. Henry, on *his* giving a receipt, she was holden to be guilty of uttering it. *R.* v. *McConnell et al., Car.* & *K.* 371. So is a banker's receipt for money deposited, if the depositor's name be forged upon it, so as to enable the forger to demand the money back from the banker. *R.* v. *Atkinson, Car.* & *M.* 325. And *see R.* v. *Harris et al. Car.* & *K.* 179. So, upon an indictment for forging and uttering an order for payment of money, where it was proved that the prisoner presented for payment at the counting house of the prosecutors a certain document in this form, "Oct. 11, 1839. This is to satisfy that R. Rogers as swept the flues, and cleaned the bilges, and repaired four bridges of the Princess Victoria. £4. 10*s.* J. Nicholson,"—and it appeared that if the document were genuine, it would

entitle the prisoner to payment, upon being presented, and the amount was in fact paid to the prisoner: this was holden by Parke, B. and Bosanquet, J. to be an order for the payment of money within the statute. *R.* v. *Rogers*, 9 *Car. & P.* 41. But a forged order of A. upon B. for payment of money, A. having no funds of B. in his hands for which he had any right to draw,—is not an order for the payment of money, within the meaning of the statute. *R.* v. *Roberts*, *Car. & M.* 652. *R.* v. *Thorn*, *Id.* 206.

A written promise to pay A. 100*l.*, or such other sum as he might incur, by reason of his being surety to the sheriff for C. D., has been holden to be an undertaking for the payment of money within the meaning of it. *R.* v. *John Reed*, 8 *Car. & P.* 623.

And it is immaterial how such instrument or writing is designated, if in law it be a will, testament, codicil, or testamentary writing, or a bill of exchange or a promissory note for the payment of money, or an indorsement on or assignment of a bill of exchange or promissory note for the payment of money, or an acceptance of a bill of exchange, or an undertaking, warrant, or order for the payment of money, within the true intent and meaning of this Act. 1 *W.* 4, *c.* 66, *s.* 4.

Forgery is the making of a false instrument, which on the face of it appears to be good and valid for the purpose for which a general instrument of the same nature would have been created, with intent to defraud some person or persons. *See R.* v. *Jones*, 2 *East, P. C.* 991. The instrument must appear to be complete upon the face of it; and therefore where a forged check, *R.* v. *Richards*, *R. & Ry.* 193, or navy bill, *R.* v. *Randall*, *Id.* 195, left a blank for the name of the payee, and where a forged order for payment of money, *R.* v. *Ravenscroft*, *R. & Ry.* 161, and a forged bill of exchange, *R.* v. *Hunter*, *Id.* 511, were not directed to any person, the judges held that the parties concerned in the forgeries could not be convicted. *See* 2 *Arch. P. A.* 235—237, 250.

In proving the forgery, the forged instrument must be produced, if it be in the hands of the prosecutor, or he can procure its production *by subpœna duces tecum* or otherwise; but if it be destroyed or lost, *How* v. *Hall*, 14 *East*, 276, n. *per Lord Ellenborough*, C. J., *R.* v. *Haworth*, 4 *Car. & P.* 254, or be in the possession of the offender, and he refuse to produce it upon due notice to him to do so, *R.* v. *Hunter*, 3 *Car. & P.* 591. *R.* v. *Hunter*, 4 *Id.* 128, the prosecutor may give secondary evidence of its contents. It must be proved to be forged; and the party, whose name is alleged to be forged, is now a competent witness to prove the forgery. 9 *G.* 4, *c.* 32, *s.* 2. But signing an instrument in a fictitious name, is as much a forgery, as forging the name of an existing person. *R.* v. *Hamp-*

ton, Ry. & M. 255. *R.* v. *Backler,* 5 *Car. & P.* 118. So if a person assume a false name, for the purpose of the fraud, and sign a written instrument, as his own, in that name, it will be forgery. *R.* v. *Marshall, R. & Ry.* 75. *R.* v. *Whiley, Id.* 90. *R.* v. *Francis, Id.* 209. *R.* v. *Peacock, Id.* 278. Also, altering a bill in a material part, is as much a forgery as if the whole instrument were forged, and the commitment, or even the indictment, in such case, may be for a forgery of the whole instrument, *R.* v. *Teague, R. & Ry.* 33. *R.* v. *Birkett, Id.* 86, or special for the alterations. Also, if a person having a blank genuine acceptance upon a bill stamp, which he is authorized by the acceptor to fill up for a certain sum, fill it up for a larger amount, he is guilty of forgery. *R.* v. *Minter Hart,* 7 *Car. & P.* 652. The intent to defraud may be laid, to defraud either the person who would have to pay the money if the instrument were genuine, *R.* v. *Mazagora, R. & Ry.* 291, or the party who would actually be defrauded if the forgery succeeded; *R.* v. *Sheppard, R. & Ry.* 169. *R.* v. *Wicks, Id.* 149. *R.* v. *Birkett, Id.* 86. *R.* v. *Crowther,* 5 *Car. & P.* 316; *and see R.* v. *Hanson, Car. & M.* 334; and the forgery itself in the one case, or the attempt to utter or use the instrument in the other, will be conclusive evidence of it. *R.* v. *Hill,* 8 *Car. & P.* 274.

In proof of an uttering, the forged instrument must be produced, if forthcoming and in the power of the prosecutor, in the same manner as upon a charge of forgery, *vide supra.* It must be proved that the party offered, uttered, disposed of, or put off, (which are the words in the statute) the forged instrument, which words will be found to include every mode by which such an instrument can be used or disposed of for value. Even where a party merely exhibited a forged receipt, to the person with whom he sought to obtain credit for it, but refused to part with the possession of it: this was held en to be an uttering, within the meaning of the statute; *R.* v. *Radford, Car. & K.* 707; although it would be otherwise in the case of a bill of exchange, or the like. Depositing a forged bill of exchange with a banker, as security, has been holden to be an uttering of it. *R.* v. *Cooke,* 8 *Car. & P.* 582. Where two or three are concerned in the uttering, if they be all present and acting in it, or at such a short distance only that they may be deemed to be aiding and assisting in it, they are all equally guilty, although the instrument in fact be tendered or uttered by one of them only; but any of them who are absent at the time of the uttering, cannot be charged with uttering, although it be done by their connivance or command, or at their suggestion; *R.* v. *Badcock, Brady & Hill, R. & Ry.* 249. *R.* v. *Stewart & Dickens, Id.* 363. *R.* v. *Soares, Atkinson, & Brighton, Id.* 25; although it seems that such connivance or command might support a charge of disposing or putting

off the forged instrument; *R.* v. *Giles, Ry. & M.* 166. *R.* v. *Palmer & Hudson, R. & Ry.* 72. And if a wife utter a forged instrument, at the suggestion, but in the absence, of her husband, she may be indicted for the uttering, and he as an accessary before the fact. *R.* v. *Sarah & John Morris, R. & Ry.* 270. Besides proof of the uttering, it must be proved that the prisoner, at the time he uttered the forged instrument, knew it to be forged; which of course can be done only by proving facts and circumstances from which such guilty knowledge may be fairly implied; *see ante*, p. 443; as, that he gave a false account of the parties, that he had other forgeries of the same kind about him when he was apprehended, *R.* v. *Hough, R. & Ry.* 120, that he had uttered such forgeries before, *R.* v. *Edw. Ball, R. & Ry.* 132, or the like. The intent to defraud may be presumed, as already mentioned, *ante*, p. 480.

Commitment for forging, &c.:—*On —— at ——, feloniously did forge a certain bill of exchange for 50l., purporting to be drawn by W. D. upon and accepted by C. D.*, [or, as the form of the instrument may be: in strictness, it is only necessary to describe it in the same manner as in a commitment for stealing it, 2 & 3 *W.* 4, *c.* 123, *s.* 12], *with intent then and there and thereby to defraud the said C. D.; against the form of the statute in such case made and provided. And you the said keeper, &c.*

Commitment for uttering, &c.:—*On —— at ——, feloniously did offer, utter, dispose of and put off a certain forged bill of exchange* [&c. as in the last form,] *with intent then and there to defraud the said C. D., he the said A. B., at the time he so offered, uttered, disposed of and put off the said forged* [*bill of exchange*] *as aforesaid, then and there well knowing the same to be forged; against the form of the statute in such case made and provided. And you the said keeper, &c.*

Making or having paper for forged exchequer bills.] Every person who shall make, or cause or procure to be made, or shall aid or assist in making, or shall knowingly have in his possession, not being legally authorized by the commissioners of excise or commissioners of Her Majesty's treasury, and without lawful excuse (the proof whereof shall be on the person accused), any instrument having therein any words, letters, figures, marks, lines, or devices peculiar to and appearing in the substance of any paper provided or to be provided or used for exchequer bills, or any machinery for working any threads into the substance of any paper, or any such thread, and intended to imitate such words, letters, figures, marks, lines, threads or devices, or any plate peculiarly employed for printing exchequer bills, or any die peculiarly used for preparing any such plate, or for sealing such exchequer bills, or any plate or die intended to imitate such plates or dies re-

spectively;—and also every person, except as before excepted, who shall make, or cause or procure to be made, or aid or assist in making, any paper, in the substance of which shall appear any words, letters, figures, marks, lines, threads or other devices peculiar to and appearing in the substance of any paper provided, or to be provided or used for exchequer bills, or any part of such words, letters, figures, marks, lines, threads, or other devices, and intended to imitate the same;—and also every person except as before excepted, who shall knowingly have in his possession, without lawful excuse (the proof whereof shall lie on the person accused) any paper whatever, in the substance whereof shall appear any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads, or devices, and intended to imitate the same;—and also every person, except as before excepted, who shall cause or assist in causing any such words, letters, figures, marks, lines, threads, or devices as aforesaid, or any part of such words, letters, figures, marks, lines, threads or other devices, and intended to imitate the same, to appear in the substance of any paper whatever, or who shall take or assist in taking any impression of any such plate or die as aforesaid,—shall be guilty of felony. 5 & 6 *Vict. c.* 66, *s.* 9.

And every person, not lawfully authorized, and without lawful excuse, (the proof whereof shall lie on the person accused), who shall purchase or receive or take, and have in his custody, any paper manufactured and provided by or under the directions of the commissioners of excise or commissioners of Her Majesty's treasury, for the purpose of being used as exchequer bills, before such paper shall have been duly stamped, signed, and issued for public use, or any such plate or die as aforesaid,—shall for every such offence be guilty of a misdemeanor; and being convicted thereof, shall, at the discretion of the court before whom he shall be tried, be imprisoned for any period not more than three years nor less than six calendar months. *Id. s.* 10.

Deeds, bonds, receipts, orders for goods, &c.] And "if any person shall forge or alter, or shall offer, utter, dispose of, or put off, knowing the same to be forged or altered, any deed, bond or writing obligatory,—or any court roll or copy of any court roll relating to any copyhold or customary estate,—or any acquittance or receipt either for money or goods, or any accountable receipt either for money or goods, or for any note, bill, or other security for payment of money,—or any warrant, order, or request for the delivery or transfer of goods, or for the delivery of any note, bill or other security for payment of money,—with intent to defraud any person whatsoever:" felony, transportation for life or for not less than

seven years, or imprisonment with or without hard labour for not more than four years nor less than two. 1 *W.* 4, *c.* 66, *s.* 10. Where a request for the delivery of goods was in this form, "Mr. Turner, Please let the lad have a hat about 9*s.*, and I will answer for the money, Ed. Barrett,"—and it was objected that it was a guarantie, and not an instrument within the Act: Gurney, B. held that although it purported to be a guarantie, it was also a request for the delivery of goods; and the prisoner was convicted. *R.* v. *White*, 9 *Car.* & *P.* 282. So, where the prisoner was indicted for forging and uttering a request for the delivery of goods, in this form,—"Aug. 3—39—One 16 in. helmet scoop, one 4 qt. kettle:" this was holden by all the judges to be a request for the delivery of goods within the statute, although it was not addressed to any person. *R.* v. *Pulbrook*, 9 *Car.* & *P.* 37. *See R.* v. *Walters*, *Car.* & *M.* 588. And as to the forgery of an administration bond, *see R.* v. *Barber*, *Fletcher* & *Dorey*, *Car.* & *K.* 434.

The commitment may readily be framed from the forms, *supra*.

Forgeries of foreign instruments.] "Where the forging or altering any writing or matter whatsoever, or the offering, uttering, disposing of, or putting off any writing or matter whatsoever, knowing the same to be forged or altered, is in this Act expressed to be an offence,—if any person shall, in that part of the United Kingdom called England, forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any such writing or matter,—in whatsoever place or county out of England, (whether under the dominion of his Majesty or not) such writing or matter may purport to be made or may have been made, and in whatever language or languages the same or any part thereof may be expressed,—every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby in the same manner as if the writing or matter had purported to be made or had been made in England;—and if any person shall in England forge or alter, or offer, utter, dispose of, or put off, knowing the same to be forged or altered, any bill of exchange, or any promissory note for the payment of money, or any indorsement on or assignment of any bill of exchange, or promissory note for the payment of money, or any acceptance of any bill of exchange, or any undertaking, warrant, or order for the payment of money, or any deed, bond, or writing obligatory for the payment of money, (whether such deed, bond, or writing obligatory shall be made only for the payment of money, or for the payment of money together with some other purpose,)—in whatever place or country out of England (whether under the

dominion of his Majesty or not) the money payable or secured by such bill, note, undertaking, warrant, order, deed, bond, or writing obligatory may be or may purport to be payable, and in whatever language or languages the same respectively or any part thereof may be expressed, and whether such bill, note, undertaking, warrant, or order be or be not under seal:—every such person, and every person aiding, abetting, or counselling such person, shall be deemed to be an offender within the meaning of this Act, and shall be punishable thereby in the same manner as if the money had been payable or had purported to be payable in England." *Id. s.* 30.

3. *As to Forged Bank Notes, Bank Note Paper, &c.*

Forging Bank of England notes.] The forgery of a bank of England note, bank post bill, &c. is a felony, and punishable in the same manner as the forgery of bills of exchange, wills, &c. *See* 1 *W.* 4, *c.* 66, *s.* 3, *ante*, p. 477.

Buying or having forged bank notes.] "If any person shall, without lawful excuse, the proof whereof shall lie upon the party accused, purchase or receive from any other person, or have in his custody or possession, any forged bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same respectively to be forged:"—felony, transportation for fourteen years. 1 *W.* 4, *c.* 66, *s.* 12.

Making paper for forged bank notes, or moulds.] And if "any person shall, without the authority of the governor and company of the *Bank of England*, to be proved by the party accused, make or use, or shall, without lawful excuse, to be proved by the party accused, knowingly have in his custody or possession, any frame, mould, or instrument for the making of paper with the words '*Bank of England*' visible in the substance of the paper, or for the making of paper with curved or waving bar lines, or with the laying wire lines thereof in a waving or curved shape, or with any number, sum, or amount, expressed in a word or words in Roman letters, visible in the substance of the paper;—or if any person shall, without such authority, to be proved as aforesaid, manufacture, use, sell, expose to sale, utter or dispose of, or shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession, any paper whatsoever with the words '*Bank of England*' visible in the substance of the paper, or any paper with curved or waving bar lines, or with the laying wire lines thereof in a waved or curved shape, or with any number, sum, or amount, expressed in a word or words in

Roman letters appearing visible in the substance of the paper; —or if any person, without such authority, to be proved as aforesaid, shall by any art or contrivance, cause the words '*Bank of England*' to appear visible in the substance of any paper, or cause the numerical sum or amount of any bank note, bank bill of exchange, or bank post bill, blank bank note, blank bank bill of exchange, or blank bank post bill, in a word or words in Roman letters, to appear visible in the substance of the paper whereon the same shall be written or printed:'—felony, transportation for fourteen years. 1 *W.* 4, *c.* 66, *s.* 13.

Provided that nothing herein contained shall prevent any person from issuing any bill of exchange or promissory note having the amount thereof expressed in guineas, or in a numerical figure or figures denoting the amount thereof in pounds sterling appearing visible in the substance of the paper, nor prevent any person from making, using or selling any paper having waving or curved lines, or any other devices in the nature of watermarks, visible in the substance of the paper, not being bar lines or laying wire lines, provided the same are not so contrived as to form the groundwork or texture of the paper, or to resemble the waving or curved laying wire lines or bar lines, or the watermarks, of the paper used by the bank of England. *Id. s.* 14.

Making, having or using plates for bank notes, or the blank notes.] And "if any person shall engrave or in anywise make upon any plate whatever, or upon any wood, stone, or other material, any promissory note or bill of exchange, or blank promissory note or blank bill of exchange, or part of a promissory note or bill of exchange, purporting to be a bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, or part of a bank note, bank bill of exchange, or bank post bill, without the authority of the governor and company of the bank of *England*, to be proved by the party accused;—or if any person shall use such plate, wood, stone, or other material, or any other instrument or device, for the making or printing any bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, or part of a bank note, bank bill of exchange, or bank post bill, without such authority, to be proved as aforesaid;—or if any person shall, without lawful excuse, the proof whereof shall lie on the party accused, knowingly have in his custody or possession any such plate, wood, stone, or other material, or any such instrument or device;—or if any person shall, without such authority, to be proved as aforesaid, knowingly offer, utter, dispose of, or put off any paper upon which any blank bank note, blank bank bill of exchange, or blank bank post bill, or

part of a bank note, bank bill of exchange, or bank post bill, shall be made or printed;—or if any person shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession any such paper:"—felony, transportation for fourteen years. *Id. s.* 15.

And "if any person shall engrave or in any wise make upon any plate whatever, or upon any wood, stone, or other material, any word, number, figure, character, or ornament, the impression taken from which shall resemble, or apparently be intended to resemble, any part of a bank note, bank bill of exchange, or bank post bill, without the authority of the governor and company of the Bank of England, to be proved by the party accused; or if any person shall use any such plate, wood, stone, or other material, or any other instrument or device, for the making upon any paper or other material the impression of any word, number, figure, character, or ornament which shall resemble, or apparently be intended to resemble, any part of a bank note, bank bill of exchange, or bank post bill, without such authority, to be proved as aforesaid;—or if any person shall, without lawful excuse, the proof whereof shall lie on the party accused, knowingly have in his custody or possession any such plate, wood, stone, or other material, or any such instrument or device;—or if any person shall, without such authority, to be proved as aforesaid, knowingly offer, utter, dispose of, or put off any paper or other material upon which there shall be an impression of any such matter as aforesaid;—or if any person shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession any paper or other material upon which there shall be an impression of any such matter as aforesaid:"—felony, transportation for fourteen years. *Id. s.* 16.

Making other bankers' paper or moulds.] And "if any person shall make or use any frame, mould, or instrument for the manufacture of paper, with the name or firm of any person or persons, body corporate, or company carrying on the business of bankers (other than the Bank of England) appearing visible in the substance of the paper, without the authority of such person or persons, body corporate, or company, the proof of which authority shall lie on the party accused;—or if any person shall, without lawful excuse, the proof whereof shall lie on the party accused, knowingly have in his custody or possession any such frame, mould, or instrument:—or if any person shall, without such authority, to be proved as aforesaid, manufacture, use, sell, expose to sale, utter, or dispose of, or shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession, any paper, in the substance of which the name or firm of any such person or persons, body corporate, or company, carrying on the business of bankers,

shall appear visible;—or if any person shall, without such authority, to be proved as aforesaid, cause the name or firm of any such person or persons, body corporate, or company carrying on the business of bankers, to appear visible in the substance of the paper upon which the same shall be written or printed:"—felony, transportation for not more than fourteen years, nor less than seven, or imprisonment with or without hard labour for not more than three years, nor less than one. *Id. s.* 17.

Making, using, &c., plates for other bankers' notes.] And "if any person shall engrave or in anywise make upon any plate whatever, or upon any wood, stone, or other material, any bill of exchange or promissory note for the payment of money, or any part of any bill of exchange or promissory note for the payment of money, purporting to be the bill or note, or part of the bill or note of any person or persons, body corporate or company carrying on the business of bankers, (other than and except the Bank of England,) without the authority of such person or persons, body coporate, or company, the proof of which authority shall lie on the party accused;—or if any person shall engrave or make upon any plate whatever, or upon any wood, stone, or other material, any word or words resembling, or apparently intended to resemble, any subscription subjoined to any bill of exchange or promissory note for the payment of money issued by any such person or persons, body corporate, or company carrying on the business of bankers, without such authority, to be proved as aforesaid;—or if any person shall, without such authority, to be proved as aforesaid, use, or shall, without lawful excuse, to be proved by the party accused, knowingly have in his custody or possession, any plate, wood, stone, or other material upon which any such bill or note, or part thereof, or any word or words resembling, or apparently intended to resemble, such subscription, shall be engraved or made;—or if any person shall, without such authority, to be proved as aforesaid, knowingly offer, utter, dispose of, or put off, or shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession any paper upon which any part of such bill or note, or any word or words resembling, or apparently intended to resemble, any such subscription, shall be made or printed:"—felony, transportation for not more than fourteen years or less than seven, or imprisonment with or without hard labour for not more than three years nor less than one. *Id. s.* 18. This section has been holden to extend to the forgery in this country of promissory notes, purporting to be the notes of certain bankers in Canada, and is not confined to the notes of bankers in England. *R.* v. *Hannon*, 9 *Car. & P.* 11, 14, *by all the judges.*

Making, using, &c., plates for notes of foreign bankers, &c.] "If any person shall engrave or in anywise make upon any plate whatever, or upon any wood, stone, or other material, any bill of exchange, promissory note, undertaking, or order for payment of money, or any part of any bill of exchange, promissory note, undertaking, or order for payment of money, in whatever language or languages the same may be expressed, and whether the same shall or shall not be or be intended to be under seal, purporting to be the bill, note, undertaking, or order, or part of the bill, note, undertaking, or order, of any foreign prince or state, or of any minister or officer in the service of any foreign prince or state, or of any body corporate, or body of the like nature, constituted or recognized by any foreign prince or state, or of any person or company of persons resident in any country, not under the dominion of his Majesty, without the authority of such foreign prince or state, minister or officer, body corporate or body of the like nature, person or company of persons, the proof of which authority shall lie on the party accused;—or if any person shall, without such authority, to be approved as aforesaid, or shall, without lawful excuse, to be proved by the party accused, knowingly have in his custody or possession any plate, stone, wood, or other material, upon which any such foreign bill, note, undertaking, or order, or any part thereof, shall be engraved or made;—or if any person shall, without such authority, to be proved as aforesaid, knowingly offer, utter, dispose of, or put off, or shall, without lawful excuse, to be proved as aforesaid, knowingly have in his custody or possession any paper, upon which any part of such foreign bill, note, undertaking, or order shall be made or printed:"—felony, transportation for not more than fourteen years or less than seven, or imprisonment with or without hard labour for not more than three years nor less than one. *Id. s.* 19.

Possession of them, what shall be deemed.] Where the having any matter in the custody or possession of any person, is in this Act expressed to be an offence, if any person shall have any such matter in his personal custody or possession, or shall knowingly and wilfully have any such matter in any dwelling-house or other building, lodging, apartment, field, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter shall be so had for his own use or for the use or benefit of another:—every such person shall be deemed and taken to have such matter in his custody or possession within the meaning of this Act. *Id. s.* 28.

4. *As to the Public Funds.*

Forging transfers of stock, or powers of attorney, &c.] And "if any person shall forge or alter, or shall utter knowing the

same to be forged or altered, any transfer of any share or interest of or in any stock, annuity, or other public fund, which now is or hereafter may be transferable at the Bank of England or at the South Sea House, or of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter or Act of parliament,—or shall forge or alter, or shall utter, knowing the same to be forged or altered, any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock as is hereinbefore mentioned, or to receive any dividend payable in respect of any such share or interest,—or shall demand or endeavour to have any such share or interest transferred, or to receive any dividend payable in respect thereof, by virtue of any such forged or altered power of attorney or other authority, knowing the same to be forged or altered, with intent in any of the several cases aforesaid to defraud any person whatsoever:"—felony, 1 *W.* 4, *c.* 66, *s.* 6, transportation for life or not less than seven years, or imprisonment, with or without hard labour, for not more than four or less than two years. 1 *Vict.*, *c.* 84, *s.* 1.

The commitment may easily be framed from the first of the forms, *ante*, p. 481.

Forging the attestation of such power of attorney.] And "if any person shall forge the name or handwriting of any person as or purporting to be a witness attesting the execution of any power of attorney or other authority to transfer any share or interest of or in any such stock, annuity, public fund, or capital stock as is hereinbefore mentioned, or to receive any dividend payable in respect of any such share or interest,—or shall utter any such power of attorney or other authority, with the name or handwriting of any person forged thereon as an attesting witness, knowing the same to be forged:"—felony, transportation for seven years, or imprisonment for not more than two years nor less than one. 1 *W.* 4, *c.* 66, *s.* 8.

The commitment may readily be framed from the forms, *ante*, p. 481.

Personating the owner of stock.] "If any person shall falsely and deceitfully personate any owner of any such share, interest or dividend as aforesaid, and thereby transfer any share or interest belonging to such owner, or thereby receive any money due to such owner as if such person were the true and lawful owner:"—felony, 1 *W.* 4, *c.* 66, *s.* 6; transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four, nor less than two years. 1 *Vict.*, *c.* 84, *s.* 1.

And "if any person shall falsely and deceitfully personate any owner of any share or interest of or in any stock, annuity,

or other public fund which now is or hereafter may be transferable at the Bank of England or at the South Sea House, or any owner of any share or interest of or in the capital stock of any body corporate, company, or society which now is or hereafter may be established by charter or Act of parliament, or any owner of any dividend payable in respect of any such share or interest as aforesaid, and shall thereby endeavour to transfer any share or interest belonging to any such owner, or thereby endeavour to receive any money due to any such owner as if such offender were the true and lawful owner:"—felony, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four years nor less than two years. 1 *W.* 4, *c.* 66, *s.* 6.

Making false entries in the books as to the public funds.] If any person shall wilfully make any false entry in, or wilfully alter any word or figure in, any of the books of account kept by the Bank of England or by the South Sea Company, in which books the accounts of the owners of any stock, annuities, or other public funds which now are or hereafter may be transferable at the Bank of England or at the South Sea House, shall be entered and kept;—or shall in any manner wilfully falsify the accounts of such owners in any of the said books,—with intent in any of the cases aforesaid to defraud any person whatsoever;—or if any person shall wilfully make any transfer of any share or interest of or in any stock, annuity, or other public fund, which now is or hereafter may be transferable at the Bank of England or at the South Sea House, in the name of any person not being the true and lawful owner of such share or interest, with intent to defraud any person whatsoever:—felony, 1 *W.* 4, *c.* 66, *s.* 5, transportation for life or not less than seven years, or imprisonment with or without hard labour for not more than four nor less than two years. 1 *Vict.* *c.* 84, *s.* 1.

The commitment may easily be framed from the first of the forms, *ante*, p. 481.

Making out false dividend warrants.] And if any clerk, officer, or servant of, or other person employed or intrusted by, the Bank of England, or South Sea Company, shall "knowingly make out or deliver any dividend warrant for a greater or less amount than the person or persons, on whose behalf such dividend warrant shall be made out, is or are entitled to, with intent to defraud any person whatsoever:"—felony, transportation for seven years, or imprisonment with or without hard labour for not more than two years, nor less than one. 1 *W.* 4, *c.* 66, *s.* 9.

The commitment may readily be framed from the forms, *ante*, p. 481.

5. *As to Public Documents.*

Acknowledging recognizances, fines, &c. in another's name.] "If any person shall, before any court, judge, or other person lawfully authorized to take any recognizance or bail, acknowledge any recognizance or bail in the name of any other person not privy or consenting to the same, whether such recognizance or bail in either case be or be not filed;—or if any person shall, in the name of any other person not privy or consenting to the same, acknowledge any fine, recovery, cognovit actionem, or judgment, or any deed to be enrolled:"—felony, transportation for life, or for not less than seven years, or imprisonment, with or without hard labour, for not more than four years nor less than two. 1 *W.* 4, *c.* 66, *s.* 11.

The commitment may readily be framed from the first of the forms, *ante*, p. 481.

False entries in registers of baptism, &c.] "If any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any register of baptisms, marriages, or burials, which hath been or shall be made or kept by the rector, vicar, curate, or officiating minister of any parish, district-parish, or chapelry in *England*, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter in any such register any entry of any matter relating to any baptism, marriage, or burial:—or shall utter any writing as and for a copy of an entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such writing to be false, forged, or altered;—or if any person shall utter any entry in any such register of any matter relating to any baptism, marriage, or burial, knowing such entry to be false, forged, or altered, or shall utter any copy of such entry, knowing such entry to be false, forged, or altered,—or shall wilfully destroy, deface, or injure, or cause or permit to be destroyed, defaced, or injured, any such register or any part thereof;—or shall forge or alter, or shall utter, knowing the same to be forged or altered, any licence of marriage:"—felony, transportation for life, or not less than seven years, or imprisonment with or without hard labour for not more than four years, nor less than two. *Id. s.* 20. *See R.* v. *Bowen*, 1 *Car.* & *K.* 501.

But no rector, vicar, curate, or officiating minister of any parish, district-parish, or chapelry, who shall discover any error in the form or substance of the entry in the register of any baptism, marriage, or burial respectively by him solemnized, shall be liable to any of the penalties herein mentioned, if he shall, within one calendar month after the discovery of such error, in the presence of the parent or parents of the child

baptized, or of the parties married, or in the presence of two persons who shall have attended at any burial, or in the case of the death or absence of the respective parties aforesaid, then in the presence of the churchwardens or chapel-wardens, correct the entry which shall have been found to be erroneous according to the truth of the case, by entry in the margin of the register wherein such erroneous entry shall have been made, without any alteration or obliteration of the original entry, and shall sign such entry in the margin, and add to such signature the day of the month and year when such correction shall be made; and such correction and signature shall be attested by the parties in whose presence the same are directed to be made as aforesaid. *Id. s.* 21.

Also by stat. 6 & 7 W. 4, c. 86, which established a general registry of all births, marriages, and burials in England, and which provided that books should be kept by the registrars for the purpose of registering them, it is enacted, by sect. 43, that "every person who shall wilfully destroy or injure or cause to be destroyed or injured any such register book, or any part or certified copy of any part thereof,—or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register book or certified copy thereof,—or shall wilfully insert or cause to be inserted in any register book or certified copy thereof, any false entry of any birth, death, or marriage,—or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any register book, knowing the same register to be false in any part thereof,—or shall forge or counterfeit the seal of the register office:"—felony, 6 *& 7 W.* 4, *c.* 86, *s.* 43, transportation for seven years, or imprisonment, with or without hard labour for not more than two years. 7 *& 8 G.* 4, *c.* 28, *s.* 8. The stat. 6 & 7 W. 4, c. 86, s. 44, contains a similar provision for the correction of errors, as the above sect. 21 of stat. 1 W. 4, c. 66.

Making false entries in copies sent to the registrar.] "And if any person shall knowingly and wilfully insert, or cause or permit to be inserted, in any copy of any register to be transmitted to the registrar of the diocese, any false entry of any matter relating to any baptism, marriage, or burial, or shall forge or alter, or shall utter knowing the same to be forged or altered, any copy of any register so to be transmitted as aforesaid, or shall knowingly and wilfully sign or verify any copy of any register so to be transmitted as aforesaid, which copy shall be false in any part thereof, knowing the same to be false:"—felony, transportation for seven years, or imprisonment with or without hard labour for not more than two years or less than one. 1 *W.* 4, *c.* 66, *s.* 22.

6. *Prosecution of Offences, &c.*

Offences where to be tried, &c.] In all cases of forgery, whether at common law or by virtue of any statute, the offence may be dealt with, tried, and laid and charged to have been committed, in any county or place in which the offender shall be apprehended or be in custody; and every accessary before or after the fact to any such offence, if the same be a felony, and every person aiding, abetting, or counselling the commission of any such offence, if the same be a misdemeanor, may be dealt with, indicted, tried, and punished, and his offence laid and charged to have been committed, in any county or place in which the principal offender may be tried. *Id. s.* 24.

And where any offence punishable under this Act shall be committed within the jurisdiction of the admiralty, it shall be dealt with, inquired of, tried, and determined in the same manner as any other offence committed within that jurisdiction. *Id. s.* 27.

Principals and accessaries.] Every principal in the second degree, and every accessary before the fact, shall be punishable in the same manner as the principal in the first degree; and every accessary after the fact to any felony punishable under this Act, shall, on conviction, be liable to be imprisoned for any term not exceeding two years. *Id. s.* 25.

Hard labour, &c.] Where any person shall be convicted of any offence, punishable under this Act with imprisonment, the court may sentence him to be imprisoned, with or without hard labour, in the common gaol or house of correction, and also direct that the offender shall be kept in solitary confinement for the whole or any portion or portions of such imprisonment, as to the court in its discretion shall seem meet. *Id. s.* 26.

FRAMEWORK KNITTERS.

See "Larceny," "Malicious Injuries," "Manufactures."

FRIENDLY SOCIETIES.

It is not intended here to treat of friendly societies, but merely of the duties of justices with respect to them. This shall be done under the following heads, merely premising an

observation or two as to the purposes for which such societies may be formed. By stat. 33 G. 3, c. 54, s. 1, any number of persons may form themselves into and establish one or more society or societies of good fellowship, for raising by subscription of the members thereof, or by voluntary contribution [or donations, 10 *G.* 4, *c.* 56, *s.* 2,] a fund "for the mutual relief and maintenance of the members thereof, in old age, sickness and infirmity, or for the relief of the widows and children of deceased members."

And by stat. 9 & 10 Vict. c. 27, s. 1, such societies may be established for any of the following purposes, viz:—

1. For the lawful insurance of money to be paid on the death of the members to their wives or children, kindred or nominees, or for defraying the expenses of the burial of the members, their wives or children:
2. For the relief, maintenance or endowment of the members, their wives, children, kindred or nominees, in infancy, old age, sickness, widowhood, or any other natural state of which the probability may be calculated by way of average:
3. Toward making good any loss sustained by the members by fire, flood, or shipwreck, or by any contingency of which the probability may be calculated by way of average, whereby they shall have sustained any loss or damage of their goods or stock-in-trade, or of the tools or instruments of their trade or calling:
4. For the frugal investment of the savings of the members, for better enabling them to purchase food, firing, clothes or other necessaries, with or without the assistance of charitable donations: provided always, that the shares in any such investment society shall not be transferable, and that each share shall be for the sole benefit of the member investing, or of some person or persons claiming by or through him or her:
5. For any other purpose which shall be certified to be legal, in England or Ireland by Her Majesty's attorney-general, and in Scotland by the lord advocate, and which shall be allowed by one of Her Majesty's principal secretaries of state, as a purpose to which the extraordinary powers and facilities of the said Acts ought to be extended: provided that the amount of the sum or value of the benefit to be assured to any member, or any person claiming by or through him or her, by any such allowed society, shall not exceed in the whole two hundred pounds; and that this limitation shall be inserted in the rules of every such allowed society.

But when a society is formed, under the provisions of the said Acts or this Act, for any purpose in addition to that of providing relief, maintenance or endowment in case of infancy,

old age, sickness, widowhood, or other natural state as aforesaid, the contributions or payments for every such other purpose shall be kept separate and distinct, or the charges defrayed by extra subscriptions of the members. *Id. s.* 3.

But a society established for the purpose of lending the money raised by the contribution of its members to the members themselves, is not a friendly society within the meaning of these statutes. *R.* v. *Scott*, 13 *Law J.* 70, *m.*

As to their exemptions from stamp duties, and the investment of their funds in saving banks, see *stat.* 3 & 4 *Vict. c.* 73.

Their rules.] The members of such a society may from time to time assemble together, and make such proper and wholesome rules for the government and guidance of the same, as to the majority of the assembly shall seem meet, so as such rules be not repugnant to the laws of this realm, nor any of the express provisions or regulations of this Act; and may impose such reasonable fines and forfeitures upon such members as shall offend against any of the rules, as shall be just and necessary for duly enforcing the same, to be paid to such uses for the benefit of the society as by such rules they shall direct. 10 *G.* 4, *c.* 56, *s.* 2. These rules shall declare the purposes for which the society is established, and to which the funds shall be applied; *Id. s.* 3; they shall contain provisions as to the powers and duties of the members at large, and of such committees or officers as may be appointed for the management of the affairs of the society; *Id. s.* 10; they shall specify the place at which the meetings of the society shall be holden, which, however, may be altered when deemed necessary; *Id.*; and shall specify whether a reference of disputes between the society and members, &c., shall be to such justices of the peace as may act for the county in which such society may be formed, or to arbitrators to be appointed as directed by the Act. *Id. s.* 27. And these rules may from time to time be altered and amended, or annulled, and new rules substituted for them; *Id. s.* 2; provided this be done at some general meeting of the members, convened by public notice, in manner directed by the Act. *Id. s.* 9. *See R.* v. *Ld. Godolphin et al.*, 8 *Ad.* & *El.* 338.

Two transcripts of these rules, signed by three members, and countersigned by the clerk or secretary, shall be transmitted to the barrister appointed to certify the rules of saving banks, [now called the registrar of friendly societies, 9 & 10 *Vict. c.* 27, *s.* 10,] who shall certify on oath that the same are in conformity to law, and shall return one transcript to the society, [and shall keep the other himself; and all transcripts of such rules hitherto certified, and filed with the rolls of the sessions of the peace of any county, &c., shall be taken off the

file, and returned to the said registrar, to be hereafter kept by him; 9 & 10 *Vict. c.* 27, *s.* 12;] and all rules or alterations thereof shall be binding on the members, &c., of the society, from the time they shall be so certified by the barrister. 4 & 5 *W.* 4, *c.* 40, *s.* 4. Provided that the registrar shall not certify the rules of any friendly society for securing any benefit depending on the laws of sickness or mortality, unless such society shall adopt a table, certified by an actuary to be one which may safely and fairly be adopted for such purpose. 9 & 10 *Vict. c.* 27. *s.* 13.

Complaints how determined.] First, as to the societies which have been formed previously to stat. 10 Geo. 4, c. 56, and which have not conformed to the provisions of that Act (*see* 4 & 5 *W.* 4, *c.* 40, *s.* 14,) if any member [or the widow or child of any deceased member, 59 G. 3, c. 128, s. 15,] shall think himself aggrieved by any act or omission of the society, or of any person acting under them, he may complain thereof on oath to any two neighbouring justices, who shall summon the presidents, wardens, stewards, or other principal officers, or any of them, if the complaint be against the society collectively, or the officer complained of, if the complaint be of him individually, and also the person having the custody of the rules of the society; and such justices, at the time and place mentioned in such summons, whether the party summoned appear or not, (on proof on oath of such summons being duly served or left at his usual place of abode,) shall proceed to hear and determine the matter of such complaint, according to the true purport and meaning of the rules so confirmed as aforesaid, and shall make such order [upon such officer or officers by name, 49 G. 3, c. 125, s. 3,] as to them shall seem just, which shall be final to all intents and purposes. 33 *G.* 3, *c.* 54, *s.* 15. *See R.* v. *Soper et al.*, 3 *B.* & *C.* 857. If the order be for payment of a sum of money, as relief, and the sum be not forthwith paid, the justices by their warrant may cause the same and costs to be levied by distress of the goods of the society, or in default of such distress, by distress of the goods of the officer who refused the relief. 49 *G.* 3, *c.* 125, *s.* 3. In all other cases the only mode of enforcing this order, is by indictment. *See R.* v. *Gilkes et al.*, 8 *B.* & *C.* 439. *R.* v. *Wade.* 1 *B.* & *Ad.* 861. *R.* v. *Inge*, 2 *Smith*, 56.

On the other hand, if a member of any such society shall offend against any of the rules, any two justices residing within the county, riding, city, &c., wherein such society shall be held, upon complaint made on oath by any member, may summon such person; and upon his appearance, or (in default thereof) upon proof on oath of the service of such summons, the justices shall proceed to hear and determine the complaint, according to the rules of the society, so confirmed

as aforesaid, and shall make such order as to them shall seem just. 49 *G.* 3, *c.* 125, *s.* 1. And if the order be for the payment of a sum of money, and the party on notice thereof shall not forthwith pay the same, the justices by their warrant shall cause such sum and costs to be levied by distress. *Id.*

If the rules of such society shall contain a provision that disputes between the society and any member thereof shall be referred to arbitration, it shall be so referred; and the award of the arbitrators shall be final. 33 *G.* 3, *c.* 54, *s.* 16. *See* 10 *G.* 4, *c.* 56, *s.* 27, *post*, p. 498.

Secondly, as to societies formed since stat, 10 G. 4, c. 56, or which have conformed to the provisions of that Act:— By that statute all former Acts are repealed, 10 *G.* 4, *c.* 56 *s.* 1, except so far as respects societies before formed, and until they shall have conformed to the provisions of that Act. 4 & 5 *W.* 4, *c.* 40, *s.* 14. And by the rules of the societies formed under or conforming to that Act, it must be specified whether all disputes between the society or any person acting under them and any individual member, shall be decided by justices of the peace or referred to arbitration; (*see* 10 *G.* 4, *c.* 56, *s.* 27;) and the remedy must be accordingly; (*See Tyrrell* v. *Woolley et al.*, 10 *Law J.* 5, *cp.*) except in cases of fraud, with respect to which the statute contains the following enactment:—

"If any officer, member, or any other person being or representing himself or herself to be a member of such society, or the nominee, executor, administrator or assignee of any member of such society, or any other person whatever, shall in or by any false representation or imposition, fraudulently obtain possession of the moneys of such society, or any part thereof, or, having in his or her possession any sum of money belonging to such society, shall fraudulently withhold the same, and for which offence no especial provision is made in the rules of such society:" any one justice of the peace, residing within the county in which such society shall be held, upon complaint thereof on oath by an officer of the society appointed for that purpose, may summon the party: and upon his appearance, or in default thereof, upon due proof on oath of the service of such summons, two justices residing within the county aforesaid may hear and determine the complaint; and upon due proof of such fraud, the justices shall convict the party, and award double the amount of the money so fraudulently obtained or withheld to be paid to the treasurer, to be by him applied to the purposes of the society, and costs not exceeding ten shillings; and if such sum and costs be not paid within the time specified in the order, the justices by their warrant may cause the same to be levied by distress, and in default of distress, the justices may commit the party to the

common gaol or house of correction, there to be kept to hard labour for not more than three calendar months. 10 G. 4, c. 56, s. 25. Or the society may proceed against the party by indictment or complaint. *Id.*

If the rules of the society specify that disputes shall be referred to arbitrators, such arbitrators shall be appointed generally at the first meeting of the society after the enrolment of its rules, and three or more afterwards chosen by ballot upon the occasion of any reference; and their award shall be final and conclusive; and if either of the parties refuse or neglect to comply with or conform to the decision of the said arbitrators or the major part of them, any one justice of the peace, residing within the county within which such society shall be held, upon complaint of the party aggrieved, and upon proof of the award and of the refusal to comply with it, may summon the party; and upon his appearance, or in default thereof, upon due proof on oath of the service of such summons, any two justices of the peace may proceed to make such order thereupon as to them shall seem just; and if the sum awarded, and costs (not exceeding 10*s.*) shall not be immediately paid, the justices by their warrant shall cause the same to be levied by distress and sale of the goods of the party or society, or in default of such distress of the goods of the society, then by distress and sale of the goods of the officer so neglecting or refusing as aforesaid. 10 *G.* 4, *c.* 56, *s.* 27.

Or, by stat. 9 & 10 Vict. c. 27, s. 15, such disputes may be referred to the registrar of friendly societies, who shall have power to proceed ex parte on notice in writing to the said trustees or managers left or sent by the said registrar, to the office of the said institution, or to the last-known place of residence of every such trustees, managers, members or officers; and whatever award, order or determination shall be made by the said registrar shall be binding and conclusive on all parties, and shall be final to all intents and purposes, without any appeal; and all assignments, sales and transfers, made in pursuance of any such order, shall be good in law; and no submission to, or award, or determination of, the said registrar shall be subject or liable to or charged with any stamp duty whatever.

And for enforcing payment of any sum so awarded to be paid, any one justice of the peace residing within the county within which such society shall be held, or within which the party resides against whom such award is made, upon complaint made upon oath by the party desiring to have the benefit of the award, or, in case of the managers or trustees of any such society, by an officer of such society, appointed for that purpose, may summon the person against whom such award shall be made, to appear at a time and place to be named in such summons; and upon his or her appearance, or in default

thereof, upon due proof upon oath of the service of such summons, any two justices residing within the county aforesaid, upon due proof of the execution of such award, may order payment of the fees and money thereby awarded to be paid, to the party appearing to be entitled thereunto, with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings; and in case the person against whom such order shall be made shall not pay the sum of money so ordered to the person, and at the time, specified in the said order, such justices shall, by warrant under their hands and seals, cause the same to be levied by distress and sale of the goods of the person on whom such order shall have been made, or by other legal proceeding, together with such costs as shall be awarded by the said justices, not exceeding the sum of ten shillings, and also the costs and charges attending such distress and sale, or other legal proceeding, returning the overplus (if any) to the owner. 9 & 10 *Vict. c.* 27, *s.* 19.

Or if it shall appear to any justice of the peace, on complaint on oath of a member of such society or of any person claiming on his account, that application has been made to such society, or to the steward or other officer thereof, for the purpose of having any dispute so settled by arbitration, and that such application has not within 40 days been complied with, or that the arbitrators have neglected or refused to make any award,—such justice may summon the trustee, treasurer, steward, or other officer of the society, or any one of them, and any two justices may hear and determine the matter in dispute, in the same manner as if the rules of the society had directed that any matter of dispute as aforesaid should be decided by justices of the peace. 4 & 5 *W.* 4, *c.* 40, *s.* 7.

If it be directed by the rules of the society, that disputes shall be decided by justices of the peace, any such justice, on complaint being made to him of any refusal or neglect to comply with the rules of such society by any member or officer thereof, may summon the party complained of to appear; and upon his appearance, or in default thereof, upon due proof on oath of the service of such summons, any two justices may proceed to hear and determine the said complaint, according to the rules of the said society; and in case the justices shall adjudge any sum of money to be paid by the party, and he do not pay it within the time specified by such justices, they shall proceed to enforce their award in manner hereinbefore directed, [*by sect.* 27, *supra*,] to be used in case of any neglect to comply with the decision of the arbitrators appointed under the authority of this Act. 10 *G.* 4, *c.* 56, *s.* 28. The order and adjudication in this case, shall be final. *Id. s.* 29.

And lastly, by statute 4 & 5 W. 4, c. 40, s. 8, if any member of a friendly society, established under statute 10 G. 4, c. 56,

or this Act, shall have been expelled from such society, and the arbitrators or justices shall award or order that he shall be reinstated, such arbitrators or justices may award or order, in default of such reinstatement, to the member so expelled, such a sum of money as to them shall seem meet or reasonable: which sum of money, if not paid, shall be recoverable from the said society, or the treasurer, trustee, or other officer, in the same way as any money awarded by arbitrators is recoverable under stat. 10 G. 4, c. 56. *Vide supra.*

Loan Societies.

In what cases.—The former statute upon the subject, 5 & 6 W. 4, c. 23, is now repealed by stat. 3 & 4 Vict. c. 110, except that all rules of such societies shall still be in force for the recovery of sums heretofore lent by them.

And by stat. 3 & 4 Vict. c. 110, (continued until the 1st October, 1846, and to the end of the then next session of parliament, by stat. 8 & 9 Vict. c. 60,) s. 3, any person wishing to form a society "for making loans to the industrious classes, and taking payment of the same by instalments, with interest thereon," may do so [without being subject to the laws against usury, *Id. s.* 2], by causing rules to be framed, certified and enrolled as therein directed. The statute, in sched. E., sets forth the different schemes, as to the instalments and interest, according to some one of which the society shall be regulated. *Id. s.* 22.

Their rules.] Three transcripts of the rules, when framed, shall be sent to the barrister appointed for certifying the rules for saving banks, for his certificate that the same are conformable to law, one of which transcripts he shall keep, another he shall transmit to the society, and a third to the clerk of the peace of the county, &c., in which the society shall be established, to be by him laid before the court of general quarter sessions, who shall allow and confirm the same without motion for that purpose; and the clerk of the peace shall then without fee, file them with the rolls of the sessions. *Id. s.* 4. And no rules so certified and enrolled, shall be altered, except at a general meeting of the members of the society; *Id. s.* 5; and the rules, if amended, shall be again certified and enrolled, as above mentioned. *Id. s.* 4. A copy of these rules shall be made in a book to be kept by the society, which shall be open to the inspection of all the members and of persons seeking loans, &c.; and such book, or an examined copy of the transcript filed at the sessions, or the copy certified by the barrister, shall be good evidence of such rules. *Id. s.* 7.

Their loans.] Upon application for a loan, the sum of 1*s.* 6*d.*

shall be paid, for the form of the application, and the expenses of inquiring into the character and solvency of the applicant and his proposed sureties. *Id. s.* 20. No loan shall exceed 15*l.*, and no second loan shall be made, until the first have been repaid. *Id. s.* 13. And there shall be no balloting for precedence of loans, nor shall the same depend upon lot or chance of any kind. *Id. s.* 24. All notes given for repayment of the loans shall be made payable to the treasurer of the society, and may be in the form given in the Act, or to the like effect; *Id. s.* 16; they shall not be transferable by indorsement or otherwise; *Id. s.* 15; and they shall not be subject to stamp duty. *Id. s.* 14. Upon every loan, the society may take by way of discount, at the rate of 12 per cent. per annum, to be calculated according to the days of repayment; but the note of hand taken may notwithstanding be made, so that the whole or all remaining unpaid shall become payable upon nonpayment of any one instalment, *Id. s.* 21. But the 1*s.* 6*d.*, and the sum so taken for discount, shall cover all expenses, including that of the borrower's pass-book and copy of rules; and any person taking more, shall be subject to the penalties of usury. *Id. s.* 23.

Recovery thereof.] If the party liable to pay such note, "shall fail to make full payment in money of the sum in the note mentioned, or any part thereof, after demand in writing made on such party, or left or sent by the post, directed to him at his usual place of abode, or at his place of residence, as described in the said note, by or on behalf of the treasurer for the time being of the said society,—any one of Her Majesty's justices of the peace for the county, riding, city, borough, division, district, or place where the person so neglecting to discharge any such note as aforesaid may happen to be or reside, upon complaint made by or on behalf of such treasurer, shall summon the person against whom such complaint shall be made;—and after his appearance, or in default thereof, upon due proof upon oath of such summons having been given, left, or sent as aforesaid, shall thereupon proceed to hear and determine the said complaint, and award such sum to be paid by the person thereunto liable to such treasurer as aforesaid as shall appear to such justice to be due thereon, without any rebate of interest, together with such a sum for costs, not exceeding the sum of five shillings, as to such justice shall seem reasonable; and it shall be lawful for any such society, if they shall think fit, to direct that the sureties for payment of any loan, or any one or more of them, shall be sued for recovery of any loan or instalment thereof in preference to the actual borrower; and if any person shall refuse or neglect to pay the sum of money which shall be so adjudged to be due upon such note and costs as aforesaid, upon the

same being demanded in manner aforesaid, such justice shall, by warrant under his hand and seal, cause the same to be levied by distress and sale of the goods of the party so neglecting or refusing as aforesaid, together with all costs and charges attending such distress and sale, returning the overplus (if any) to the owner; and no such proceedings shall be removed by *certiorari* or otherwise into any of Her Majesty's superior courts of record; provided always, that nothing herein contained shall be construed to affect the right of the landlord to be paid the amount of rent, which may be due to him at the time of making the distress, out of the proceeds of the said sale." *Id. s.* 16. As to actions by loan societies upon these notes, *see Green et al.* v. *Gosden*, 11 *Law J.*, 4 *cp. Brown* v. *Langley*, 12 *Id.* 62, *cp. Bradburn et al.* v. *Whitbread*, *Id.* 218, *cp.*, 5 *Man. & Gr.* 439. *Timms* v. *Williams*, 3 *Q. B.* 413. *Bawden* v. *Howell*, 3 *Man. & Gr.* 638. *Alban et al.* v. *Pyke*, 4 *Id.* 421. *Brown et al.* v. *Langley*, *Id.* 466.

The following forms, given by the statute, may be used, with such additions and variations as may be necessary to adapt them to the particular circumstances of each case. *Id. s.* 26.

Form of the summons:—

to wit. } *Whereas complaint has this day been made before me, one of Her Majesty's justices of the peace acting for the county of* ——, [or ——, *one of the magistrates of the police courts of the metropolis, sitting at the police court at* ——, *within the metropolitan district*, or as the case may be,] *by* ——, *on behalf of the* [name of the society] *society enrolled pursuant to the Act intituled* [here insert the title of this Act*,] *that you have failed to make payment of a certain instalment* [or *certain instalments*] *amounting to* ——, *being part of a loan of* —— *pounds, secured by a certain note entered into by you and* ——, *to the treasurer for the time being of the said society, dated the* —— *day of* ——, *one thousand eight hundred and* ——. *These are therefore in Her Majesty's name, to require you personally to appear at* —— *before me* [or *such other justice acting for the county of* ——, or *such other magistrate of the police courts aforesaid, as shall be then and there sitting on the* —— *day of* ——, or as the case may be], *at* —— *of the clock, then and there to answer the complaint.*

Given under my hand and seal this —— *day of* ——, *in the year of our Lord one thousand eight hundred and* ——.

Form of the distress warrant:—

to wit. } *To all constables and others, Her Majesty's officers of the peace for the county of* ——, *and all others whom it may concern.*

Whereas on the —— *day of* ——, *in the year of our Lord one*

* An Act to amend the laws relating to Loan Societies.

thousand eight hundred and ——, ——, *late of the parish of* ——, *in the county of* ——, *was and is duly convicted before me,* ——, *one of Her Majesty's justices of the peace acting in and for the county* [or *one of the police magistrates of the metropolis sitting at the police court in* ——, *within the metropolitan district,* or as the case may be], *upon the oath of* ——, [or as the case may be], *to* a certain loan society called* ——, *held at* ——, *in the county of* ——, *enrolled under and by virtue of a certain Act of Parliament, intituled* [here insert the title of this act†]; *for that on the* —— *day of* ——, *in the year of our Lord one thousand eight hundred and* ——, *at the parish of* ——, *in the county of* ——, *the said* ——, *being the party liable to pay the money hereinafter mentioned, did fail to make full payment, in money, to* ——, *the treasurer of the said society, of the sum of* —— *pounds,* —— *shillings and* —— *pence, being part of the sum of* —— *pounds lent and advanced to* ——, *and secured by note bearing date the* —— *day of* ——, *one thousand eight hundred and* ——, *entered into by the said* ——, *to the said treasurer of the said society, demand having been duly made on the said* ——, *for the said sum of* —— *pounds* —— *shillings and* —— *pence, previous to the said* —— *day of* ——, *on behalf of the said treasurer of the said society, contrary to the said statute; and the said* —— *having been duly summoned before me the said justice* [or *magistrate at the police court aforesaid*], *on the said* —— *day of* ——, *to answer the said complaint, and having* [or *not,* as the case may be], *appeared before me in pursuance of such summons, on the said* —— *day of* ——, *at* ——, [or *at the police court aforesaid,*] *I the said justice* [or *magistrate*] *did proceed to hear and determine the said complaint, and did adjudge and award the said* —— *to pay the sum of* —— *pounds* —— *shillings and* —— *pence, to the said treasurer, and which appeared to me to be due on the said note, and also the sum of* —— *shillings and* —— *pence, for the costs of the said summons, complaint and hearing thereof, and making together the sum of* ——; *and whereas it appears to me the said justice* [or *magistrate*] *that the said sum of* —— *pounds* —— *shillings and* —— *pence, having been duly demanded of the said* ——, *and that he hath neglected to pay and satisfy the same: these are therefore to command you to levy the said sum of* —— *pounds* —— *shillings and* —— *pence, by the distress and sale of the goods and chattels of the said* ——. *And I do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within four days next after making such distress, unless the last-mentioned sum of money for which such distress shall be made, and all the costs and charges attending such distress, shall be sooner paid, rendering the overplus, if any, on demand, to the said* ——. *And you are hereby*

* &c. † An Act to amend the laws relating to Loan Societies.

commanded to certify to me the said justice [or *magistrate*] ***what you shall do by virtue of this warrant.***

Given under my hand and seal at ——, this —— day of ——, in the year of our Lord one thousand eight hundred and ——.

Members and officers of the society may be witnesses. *Id. s.* 25. No advantage shall be taken for want of form in any of the proceedings. *Id. s.* 26.

Or instead of proceeding thus before a justice of the peace, the treasurer or clerk of the society may sue for the amount in any county court or court of requests having jurisdiction of the same; *Id. s.* 17; and if the amount shall exceed that for which the court shall have jurisdiction, the treasurer or clerk may declare that he is willing to accept such sum as the court can award, and which the court shall adjudge accordingly. *Id. s.* 28.

The treasurer or clerk for the time being may thus sue and recover on such notes, whether or not any change shall have taken place in the person by whom the office was filled at the time of making the note. *Id. s.* 19.

FRUIT AND FRUIT TREES.

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1. *Game, what and who entitled to it.*

Game, what.] The word "game" shall, for all the purposes of this Act, be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. 1 & 2 *W.* 4, *c.* 32, *s.* 2. *See under the head "Certificate," in this title, post*, p. 511.

Landlords when entitled to the game.] "In all cases, where any person shall occupy any land under any lease or agreement made previously to the passing of this Act, except in the cases herein-after next excepted, the lessor or landlord shall have the right of entering upon such land, or of authorizing any other person or persons who shall have obtained an annual game certificate to enter upon such land, for the purpose of killing or taking the game thereon; and no person occupying any land under any lease or agreement, either for life or for years, made previously to the passing of this Act, shall have the right to kill or take the game on such land, except where the right of killing the game upon such land has been expressly granted or allowed to such person by such lease or agreement, or except where upon the original granting or renewal of such lease or agreement a fine or fines shall have been taken, or except where in the case of a term for years such lease or agreement shall have been made for a term exceeding twenty-one years." *Id. s.* 7.

And he may authorize others to kill it.] And "where the lessor or landlord shall have reserved to himself the right of killing the game upon any land, it shall be lawful for him to authorize any other person or persons, who shall have obtained an annual game certificate, to enter upon such land, for the purpose of pursuing and killing game thereon." *Id. s.* 11.

Persons entitled by contract, lords of manors, &c.] "Nothing in this Act contained, shall authorize any person, seised or possessed of or holding any land, to kill or take the game or

to permit any other person to take or kill the game upon such land, in any case where, by any deed, grant, lease, or any written or parol demise or contract, a right of entry upon such land for the purpose of killing or taking the game hath been or hereafter shall be reserved or retained by or given or allowed to any grantor, lessor, landlord, or other person whatsoever; nor shall any thing in this Act contained, defeat or diminish any reservation, exception, covenant, or agreement already contained in any private Act of Parliament, deed, or other writing relating to the game upon any land; nor in any manner prejudice the rights of any lord or owner of any forest, chase, or warren, or of any lord of any manor, lordship, or royalty, or reputed manor, lordship or royalty, or of any steward of the crown of any manor, lordship, or royalty appertaining to His Majesty." *Id. s.* 8.

Owners of cattle-gates or rights of common, not.] "Nothing herein contained shall be deemed to give to any owner of cattle-gates or rights of common upon or over any wastes or commons, any interest or privilege which such owner was not possessed of before the passing of this Act, nor to authorize such owner of cattle-gates or rights of common to pursue or kill the game found on such wastes or commons; and that nothing herein contained shall defeat or diminish the rights or privileges which any lord of any manor, lordship or royalty, or reputed manor, lordship or royalty, or any steward of the crown of any manor, lordship or royalty appertaining to His Majesty, may, before the passing of this Act, have exercised in or over such wastes or commons; and that the lord or steward of the crown of every manor, lordship or royalty, or reputed manor, lordship or royalty, shall have the right to pursue and kill the game upon the wastes or commons within such manor, lordship or royalty, or reputed manor, lordship or royalty, and to authorize any other person or persons who shall have obtained an annual game certificate to enter upon such wastes or commons for the purpose of pursuing and killing the game thereon." *Id. s.* 10.

Provision as to Her Majesty's forests, &c.] "Nothing in this Act contained shall in any way alter or affect the prerogative, rights, or privileges of His Majesty, his heirs or successors, nor the powers or authorities now vested in the commissioners of His Majesty's woods, forests, and land revenues in or relating to any of His Majesty's forests, or the boundaries thereof, nor in or relating to the appointment of any stewards, gamekeepers, or other officers of any of His Majesty's forests, parks or chases, or of any hundred, honor, manor, or lordship, being part of the possessions and land revenues of the crown, nor the rights, privileges, or immunities of any chief

justice in eyre, or any warden, deputy warden, or lieutenant of any of His Majesty's forests, or any rangers, verderers, foresters, master-keepers, under-keepers, or other officers of or in any such forests, parks, or chases, or of any person entitled to any right or privilege under them or any of them, nor the rights or privileges of any person holding under any grants or purchases from the crown, nor give to any lord of any manor or manors within any forest or the boundaries thereof, nor to any other person whatsoever, any privileges, rights, or powers within any such forest, park, or chase, or the boundaries thereof, which he did not possess, or to which he was not entitled, before the passing of this Act; but that all the aforesaid prerogatives, immunities, privileges, rights, and powers shall remain as if this Act had not been made. *Id.* s. 9.

2. *Gamekeepers, &c.*

Who may appoint gamekeepers.] "Any lord of a manor, lordship or royalty, or reputed manor, lordship or royalty, or any steward of the crown of any manor, lordship, or royalty appertaining to His Majesty,—by writing under hand and seal, or, in case of a body corporate, then under the seal of such body corporate, may appoint one or more person or persons as a gamekeeper or gamekeepers, to preserve or kill the game within the limits of such manor, lordship or royalty, or reputed manor, lordship or royalty, for the use of such lord or steward thereof, and to authorize such gamekeeper or gamekeepers within the said limits to seize and take for the use of such lord or steward all such dogs, nets, and other engines and instruments for the killing or taking of game as shall be used within the said limits by any person not authorized to kill game for want of a game certificate. *Id. s.* 13.

As this statute repealed all the former statutes relating to game, it virtually repealed the authorities given to gamekeepers under former Acts; and if no appointment be made under this new Act, all such gamekeepers are without authority whatever. And therefore where a gamekeeper, appointed under the old statutes, but whose appointment was not renewed under the present Act, seized the dog of an uncertificated person in pursuit of game, it was holden that he was liable to an action for it, and that he was not entitled to any notice of action. *Lidster* v. *Borrow*, 9 *Ad.* & *El.* 654. *S. P. Bush* v. *Green*, 4 *Bing. N. C.* 41. A deputation, authorizing the gamekeeper to seize all "*greyhounds, setting dogs,*" &c. and further to do all things which belonged to the office of gamekeeper, according to the directions of the said Acts of parliament, was holden not to authorize the gamekeeper to seize hounds. *Grant* v. *Hulton et al.*, 1 *B.* & *A.* 134.

If it become a question whether the person who has thus appointed a gamekeeper, be really a lord of a manor or reputed manor, such evidence of a colourable title must be given in support of the right, as *primâ facie* affords a presumption that there really exists such a manor or reputed manor, and that the party who made the appointment has a *bonâ fide* claim to it. *Rushworth* v. *Craven*, *M'Clel.* & *Y.* 417. But in order to rebut such a presumption, the opposite party must shew the real title to the manor to be in some other person. *Hunt* v. *Anderson*, 3 *B.* & *A.* 341.

Who may appoint them in Wales.] "Every person who shall be entitled to kill the game upon any lands in Wales, of the clear annual value of 500*l.*, whereof he shall be seized in fee or as of freehold, or to which he shall otherwise be beneficially entitled in his own right, (if such lands shall not be within the bounds of any manor, lordship, or royalty, or if, being within the same, they shall have been enfranchised or alienated therefrom,) may appoint, by writing under his hand and seal, gamekeepers to preserve or kill the game upon such lands, and also upon the lands in Wales of any other person who, being entitled to kill the game upon such last-mentioned lands, shall, by licence in writing, authorize him to appoint a gamekeeper to preserve or kill the game thereupon, such last-mentioned lands not being within the bounds of any manor, lordship, or royalty, or having been enfranchised or alienated therefrom; and the person so appointing a gamekeeper, may authorize him to seize and take, for the use of the person so appointing, upon the lands of which he shall be appointed gamekeeper, all such dogs, nets, and other engines and instruments for the killing or taking of game, as shall be used upon the said lands by any person not authorized to kill game for want of a game certificate." *Id. s.* 15.

Who may grant deputations.] Any lord of a manor, lordship, or royalty, or reputed manor, lordship or royalty,—or any steward of the crown of any manor, lordship or royalty appertaining to His Majesty,—may "appoint and depute any person whatever, whether acting as a gamekeeper to any other person or not, or whether retained and paid for as the male servant of any other person or not, to be a gamekeeper for any such manor, lordship or royalty, or reputed manor, lordship or royalty, or for such division or district of such manor, lordship or royalty, as such lord or steward of the crown shall think fit; and to authorize such person, as gamekeeper, to kill game within the same for his own use, or for the use of any other person or persons who may be specified in such appointment or deputation, and also to give to such person all such powers and authorities as may by virtue of this Act be

given to any gamekeeper of a manor; and no person so appointed gamekeeper, and empowered to kill game for his own use, or for the use of any other person so specified as aforesaid, and not killing any game for the use of the lord or steward of the crown of the manor, lordship or royalty, or reputed manor, lordship or royalty, for which such deputation or appointment shall be given, shall be deemed to be, or shall be entered or paid for as, the gamekeeper or male servant of the lord or steward making such appointment or deputation, anything in any Act or Acts contained to the contrary notwithstanding." *Id. s.* 14. *See the cases cited after sect.* 13, *ante*, p. 508.

Appointments, &c., to be registered.] But no appointment or deputation as gamekeeper, by virtue of this Act, shall be valid, unless and until it shall be registered with the clerk of the peace for the county, &c. *Id. s.* 16.

As to gamekeeper's certificate, *see infra* and *post*, p. 512.

3. *Certificate to kill Game, &c.*

In the statute relating to the assessed taxes, (52 Geo. 3, c. 93,) a schedule is given, intituled "a schedule of the duties payable in respect of killing game," which not only states the duties payable upon game certificates, but also lays down the rules for charging those duties, including the punishments assigned for evading them. The following are the duties:—

Duty for gamekeepers, &c.] Upon every person who shall use any dog, gun, net, or other engine, for the purpose of taking or killing any game whatever, or any woodcock, snipe, quail, or landrail, or any conies, or shall take or kill, by any means whatever, or shall assist in any manner in the taking or killing, by any means whatever, any game, or any woodcock, snipe, quail, or landrail, or any coney,—by virtue of any deputation or appointment, duly registered or entered as gamekeeper, for any manor or royalty in England, Wales, or Berwick-upon-Tweed, or for any lands in Scotland: if such person shall be a servant to any person duly charged in respect of such servant to the duties granted on servants in schedule (C.) No. 1, there shall be charged in respect of every such person acting by virtue of such deputation or appointment, the annual sum of 4*s.*, in addition to the duty of 1*l.* 1*s.* granted in respect of such person by the Act passed in the forty-eighth year of the reign of His present Majesty. And where the duty granted by the said Act shall not be chargeable in respect of such person, the annual sum of 1*l.* 5*s.* And if such person as last aforesaid shall not be a servant for whom the said duties on servants

shall be charged, there shall be charged in respect of every such person acting by virtue of such deputation or appointment the annual sum of 10*s.* 6*d.*, in addition to the duty of 3*l.* 3*s.* granted by the said Act. And where the duty granted by the said Act shall not be chargeable in respect of such person, the annual sum of 3*l.* 13*s.* 6*d.* *Id. sch.* (L.)

Duty for others.] Upon every other person who shall use any dog, gun, net, or other engine for any of the purposes before mentioned, or shall take or kill by any means whatever, or assist in any manner [except in the company or presence, and for the use, of some person who shall have duly obtained a certificate in his own right, 54 *G.* 3, *c.* 141] in the taking or killing by any means whatever, any game, or any woodcock, snipe, quail, or landrail, or any coney, there shall be charged the annual sum of 10*s.* 6*d.* in addition to the like duty of 3*l.* 3*s.* granted by the said Act. And where the duty granted by the said Act shall not be chargeable upon such person, the annual sum of 3*l.* 13*s.* 6*d.* *Id. sch.* (L.)

Persons who have obtained game certificates in Ireland, are authorized to kill game in England, on payment of the difference between the English and Irish duties. 7 & 8 *G.* 4, *c.* 49.

Exceptions.] 1.—The taking of woodcocks and snipes with net or springes.

2.—The taking or destroying of conies by the proprietors of warrens, or on any inclosed ground whatever, or by the tenants of lands, either by himself, herself, or themselves, or by his, her, or their direction or command.

Exemptions.] Any of the royal family.

Rules for charging the said last-mentioned Duties.

Certificate, when and from whom obtained.] Every person who intends to use or shall use at any time after the fifth day of April one thousand eight hundred and thirteen any dog, gun, net, or other engine for any of the purposes mentioned in the above schedule, shall, before he shall so use the same in any year, and every person who intends to take or kill, or to assist in the taking or killing, any game, woodcock, snipe, quail, landrail, or coney, shall, before he shall so take or kill, or assist in the taking or killing the same, pay or cause to be paid in each year, unto the collectors of the assessed taxes for the parish, ward, or place where he shall reside, the duty hereby made payable, and shall obtain a certificate thereof, in the manner herein directed, which certificate shall continue in

collector of the parish where any such person shall then be,—or by any commissioner for the execution of this Act, acting for the county, riding, division, or place in which such person shall then be,—or by any lord or lady, or gamekeeper of the manor, royalty, or lands wherein such person shall then be,—or by any inspector or surveyor of taxes acting in the execution of the said Acts or this Act for the district in which such persons shall then be,—or by any person duly assessed to the duties granted in this schedule, or consolidated therewith,—or by the owner, landlord, lessee, or occupier of the land in which such person shall then be:—it shall be lawful for such assessor, collector, commissioner, or gamekeeper, inspector or surveyor, or other person as aforesaid, or such owner, landlord, lessee, or occupier of land as aforesaid, to demand and require from the person so acting the production of a certificate issued to him for that purpose, which certificate every such person is hereby required to produce to the person so demanding the same, and to permit him to read the same, and (if he shall think fit) to take a copy thereof, or any part thereof; or in case no such certificate shall be produced to the person demanding the same as aforesaid, then it shall be lawful for the person having made such demand, to require the person so acting forthwith to declare to him his christian and surname and place of residence, and the parish and place (if any) in which he shall have been assessed to the duties by this Act granted or consolidated therewith; and if any such person shall, after such demand made, wilfully refuse to produce and shew a certificate issued to him for that purpose, or in default thereof as aforesaid, to give to the person so demanding the same, his christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed, or shall produce any false or fictitious certificate, or give any false or fictitious name, place of residence, or place of assessment,—every such person shall forfeit and pay the sum of twenty pounds, to be sued for, recovered, and applied in the manner herein-after directed. 52 *G.* 3, *c.* 93, *sch.* (L.) *s.* 11.

The penalty in this case is not incurred by the party refusing to produce his licence, unless on request he also refuse to tell his christian and surname and place of residence. *See Molton* v. *Rogers*, 4 *Esp.* 215. But if these be demanded of the party, it is not necessary for the person demanding them to go on to ask in what place the party is assessed to the game duty, nor is it necessary for him to produce his own certificate. *Scarth* v. *Gardener*, 5 *Car.* & *P.* 38. Also, it is not necessary that the demand should actually be made upon the land on which the party is sporting; but it must be made either there, or so immediately after his quitting the land that the discovery and demand may appear connected, and parts of the same transaction. *Id.*

Conviction :—*For that he the said C. D., on the —— day of ——, in the year aforesaid, at ——, in the said county, and within the district of ——, was discovered by one A. B. using a gun* ["dog, gun, net, or other engine"], *for the purpose of taking and killing game,* ["game, woodcock, snipe, quail, landrail, or conies"], *he the said A. B. being then and there* [*a gamekeeper of the manor wherein the said C. D. then was;*" [see the statute :] *and he the said A. B., as such gamekeeper as aforesaid, did thereupon then and there demand and require from the said C. D. the production of a certificate to him for that purpose issued, which the said C. D. then and there refused to produce; and that no such certificate being produced to the said A. B. so demanding the same as aforesaid, the said A. B. thereupon then and there did require the said C. D. forthwith to declare to him the said A. B. the christian and surname of him the said C. D. and the place of residence of him the said C. D., and the parish or place (if any) in which he the said C. D. was assessed to the duties by a certain Act, passed in the fifty-second year of the reign of King George the Third, (intituled "An Act for granting to His Majesty certain new and additional duties of assessed taxes, and for consolidating the same with the former duties of assessed taxes,") granted or consolidated therewith; and the said C. D. thereupon then and there, after such demand made as aforesaid, did wilfully refuse to produce and show any certificate issued to him for that purpose; and after default so made in producing a certificate as aforesaid, did wilfully refuse to give in to the said A. B., so demanding the same, the christian and surname of him the said C. D., and the place of residence of him the said C. D., and the parish or place (if any) in which he the said C. D. was assessed as aforesaid;*" [or, "*did produce a certain false and fictitious certificate;*" or, "*did give to the said A. B. a false and fictitious name,* or, *a false and fictitious place of residence,* or, *a false and fictitious place of assessment*]; *contrary to the form of the statute in that case made and provided; and the said C. D. was by me adjudged to pay,* &c. as *post,* p. 517.

Sporting without certificate.] If any person or persons shall, after the fifth day of April, one thousand eight hundred and thirteen, in England or Wales, or after the twenty-fourth day of May, one thousand eight hundred and thirteen, in Scotland, do any act for any of the purposes mentioned in this schedule, without having obtained such certificate as is directed by this Act in order to an assessment for the year wherein such person or persons shall so act, every such person shall forfeit and pay the sum of twenty pounds; and every such offender shall also be liable to the payment to His Majesty, his heirs or successors, to the full duty of three pounds thirteen shillings and sixpence sterling, over and above the said penalty, to be charged in the assessment of the parish or place where the offence shall be;

collector of the parish where any such person shall then be,—or by any commissioner for the execution of this Act, acting for the county, riding, division, or place in which such person shall then be,—or by any lord or lady, or gamekeeper of the manor, royalty, or lands wherein such person shall then be,—or by any inspector or surveyor of taxes acting in the execution of the said Acts or this Act for the district in which such persons shall then be,—or by any person duly assessed to the duties granted in this schedule, or consolidated therewith,—or by the owner, landlord, lessee, or occupier of the land in which such person shall then be:—it shall be lawful for such assessor, collector, commissioner, or gamekeeper, inspector or surveyor, or other person as aforesaid, or such owner, landlord, lessee, or occupier of land as aforesaid, to demand and require from the person so acting the production of a certificate issued to him for that purpose, which certificate every such person is hereby required to produce to the person so demanding the same, and to permit him to read the same, and (if he shall think fit) to take a copy thereof, or any part thereof; or in case no such certificate shall be produced to the person demanding the same as aforesaid, then it shall be lawful for the person having made such demand, to require the person so acting forthwith to declare to him his christian and surname and place of residence, and the parish and place (if any) in which he shall have been assessed to the duties by this Act granted or consolidated therewith; and if any such person shall, after such demand made, wilfully refuse to produce and shew a certificate issued to him for that purpose, or in default thereof as aforesaid, to give to the person so demanding the same, his christian and surname, and place of residence, and the parish or place (if any) in which he shall have been assessed, or shall produce any false or fictitious certificate, or give any false or fictitious name, place of residence, or place of assessment,—every such person shall forfeit and pay the sum of twenty pounds, to be sued for, recovered, and applied in the manner herein-after directed. 52 *G.* 3, *c.* 93, *sch.* (L.) *s.* 11.

The penalty in this case is not incurred by the party refusing to produce his licence, unless on request he also refuse to tell his christian and surname and place of residence. *See Molton* v. *Rogers*, 4 *Esp.* 215. But if these be demanded of the party, it is not necessary for the person demanding them to go on to ask in what place the party is assessed to the game duty, nor is it necessary for him to produce his own certificate. *Scarth* v. *Gardener*, 5 *Car.* & *P.* 38. Also, it is not necessary that the demand should actually be made upon the land on which the party is sporting; but it must be made either there, or so immediately after his quitting the land that the discovery and demand may appear connected, and parts of the same transaction. *Id.*

Conviction:—*For that he the said C. D., on the —— day of ——, in the year aforesaid, at ——, in the said county, and within the district of ——, was discovered by one A. B. using a gun* ["dog, gun, net, or other engine"], *for the purpose of taking and killing game,* ["game, woodcock, snipe, quail, landrail, or conies"], *he the said A. B. being then and there* [*a gamekeeper of the manor wherein the said C. D. then was;*" [see the statute:] *and he the said A. B., as such gamekeeper as aforesaid, did thereupon then and there demand and require from the said C. D. the production of a certificate to him for that purpose issued, which the said C. D. then and there refused to produce; and that no such certificate being produced to the said A. B. so demanding the same as aforesaid, the said A. B. thereupon then and there did require the said C. D. forthwith to declare to him the said A. B. the christian and surname of him the said C. D. and the place of residence of him the said C. D., and the parish or place (if any) in which he the said C. D. was assessed to the duties by a certain Act, passed in the fifty-second year of the reign of King George the Third, (intituled "An Act for granting to His Majesty certain new and additional duties of assessed taxes, and for consolidating the same with the former duties of assessed taxes,") granted or consolidated therewith; and the said C. D. thereupon then and there, after such demand made as aforesaid, did wilfully refuse to produce and show any certificate issued to him for that purpose; and after default so made in producing a certificate as aforesaid, did wilfully refuse to give in to the said A. B., so demanding the same, the christian and surname of him the said C. D., and the place of residence of him the said C. D., and the parish or place (if any) in which he the said C. D. was assessed as aforesaid;*" [or, "*did produce a certain false and fictitious certificate;*" or, "*did give to the said A. B. a false and fictitious name,* or, *a false and fictitious place of residence,* or, *a false and fictitious place of assessment*]; *contrary to the form of the statute in that case made and provided; and the said C. D. was by me adjudged to pay,* &c. as *post,* p. 517.

Sporting without certificate.] If any person or persons shall, after the fifth day of April, one thousand eight hundred and thirteen, in England or Wales, or after the twenty-fourth day of May, one thousand eight hundred and thirteen, in Scotland, do any act for any of the purposes mentioned in this schedule, without having obtained such certificate as is directed by this Act in order to an assessment for the year wherein such person or persons shall so act, every such person shall forfeit and pay the sum of twenty pounds; and every such offender shall also be liable to the payment to His Majesty, his heirs or successors, to the full duty of three pounds thirteen shillings and sixpence sterling, over and above the said penalty, to be charged in the assessment of the parish or place where the offence shall be

committed, by way of increased charge, by the inspector or surveyor of the said parish or place; which increased charge may be made at any time within six calendar months after the duty shall have accrued, and the said charge shall be allowed by two commissioners according to the directions of the Acts relating to the duties of assessed taxes, subject to appeal whenever such commissioners shall appoint the time and place for hearing and determining the said appeal. *Id. sch.* (L.) *s.* 12.

Conviction:—*For that he the said C. D., on the —— day of —— in the year aforesaid, at ——, in the said county, and within the district of ——, did use a gun* ["dog, gun, net, or other engine"], *for the purpose of taking and killing game* ["game, woodcock, snipe, quail, landrail or conies"] *without having obtained such certificate as is directed by the statute in that behalf made and provided, in order to an assessment for the said year; contrary to the form of the statute in that case made and provided, and passed in the fifty-second year of the reign of His late Majesty King George the Third, intituled "An Act for granting to his Majesty certain new and additional duties of assessed taxes, and for consolidating the same with the former duties of assessed taxes." And he was adjudged to pay, &c.* infra.

The purpose for which the party used the gun, may be proved in the same manner as an intent, as mentioned *ante*, p. 443.

Besides this, the party may also be convicted on stat. 1 & 2 W. 4, c. 32, s. 23, (*post* p. 518), for the same offence, and be liable to forfeit not exceeding five pounds, by way of cumulative penalty and costs.

Proceedings for penalties.] Any two commissioners for executing this Act, or any one justice of the peace of the county, riding, or division, or for any city, borough, liberty, or place, wherein any offence or offences mentioned or described in this schedule shall be committed, (such justice being also a commissioner for executing this Act,) shall, upon information or complaint to him or them made of any such offence or offences committed within the district where he or they shall act as such commissioner or commissioners, within three calendar months after the offence shall be committed, summon the person accused, and also, the witnesses on either side, to appear before him or them; and upon the appearance of the person or persons accused, or in default of his or their appearance according to such summons, shall proceed to hear and determine the matter in a summary way; and upon due proof made thereof, shall give judgment for the penalty or penalties, or for such part thereof, to which part thereof the said commissioners or justice shall think proper to mitigate the same (the same not being in any case mitigated to less than one moiety of the said penalty or penalties). 52 *G.* 3, *c.* 93, *sch.* (L.) *s.* 13. And

the justices, &c. who convict, must be the same who received the information or complaint. *Jones* v. *Gurdon*, 11 *Law J.* 45, *m*, 2 *Q. B.* 600.

The conviction may be in the form following, or in any other form of words to the like effect (*mutatis mutandis*): *Id. sch.* (L.) *s.* 15.

Be it remembered, that on the —— day of ——, in the year of our Lord ——, at ——, in the —— of ——, A. B. of ——, was duly convicted by me [or *us*] *of* [here state the offence], *and adjudged to pay the sum of —— for his said offence.*

Given under the hands and seals or *hand and seal of —— being commissioners acting in the execution of the Acts relating to assessed taxes for the district of ——*; or *—— being a justice of the peace for ——, and a commissioner acting in the execution of the acts relating to assessed taxes for the district of ——.*

And every such conviction shall be entered and registered upon the books of assessment of the commissioners of the district where the offence was committed, and after such entry and registry, shall be transmitted to the court of appeal, as herein directed, to be filed there of record; and no conviction of such commissioners or justice shall be removable by any process whatever into any other court of law or equity, or be subject to revision in any manner, other than as aforesaid. *Id. sch.* (L.) *s.* 15.

In default of payment of the penalty at the time of conviction, the justice or commissioners shall award and issue his or their warrant or warrants under his or their hand and seal or hands and seals for levying the same, with reasonable costs, of the cattle, goods, and chattels of the offender, and cause sale to be made of the said cattle, goods and chattels so distrained, in case they shall not be redeemed within four days; and the money arising from such sale, shall in the first place be liable for payment of the said penalty or penalties adjudged to be paid, and in the next place for payment of the costs attending the information, conviction, and warrant, to be settled by the said commissioners or justice, and indorsed on such warrant, and also the reasonable costs attending the distress and keeping the goods and chattels distrained, and maintaining the cattle, if any, during the four days allowed to redeem the same, and also the expense of the sale thereof, and of returning the said warrant to the commissioners or justice, and entering the same with an indorsement thereon of what had been done therein; and where sufficient distress cannot be found, the said justice or commissioners shall commit such offender to the house of correction, there to remain for any space of time not exceeding six calendar months, unless the said penalty or penalties shall be sooner paid. *Id. sch.* (L.) *s.* 13.

All penalties recovered, shall be paid to the collector of as-

sessed taxes for such parish or place, where the offence shall have been committed, to be by him accounted for in the same manner as the duties contained in this Act, and shall and may be distributed, and apportioned, and applied in such manner as other penalties may by the said acts relating to the said duties be distributed, apportioned, and applied. *Id. sch.* (L.) *s.* 16.

Appeal.] If any person shall find himself aggrieved by the judgment of such commissioner or justice, then, upon giving security to the amount of double the penalty, he may appeal to the justices of the peace at the next general quarter sessions for the county, riding, or division, who may finally hear and determine the same; and in case the judgment of such commissioners or justice shall be affirmed, the said court of quarter sessions may award the person to pay costs occasioned by such information, conviction, and appeal, as to them shall seem meet. *Id. sch.* (L.) *s.* 13.

Witnesses.] If any person shall be summoned as a witness to give evidence before such commissioners or justice, or before the courts of quarter sessions upon appeal, either on the part of the prosecution or the person accused, and shall neglect or refuse to appear without a reasonable excuse for his neglect or refusal, to be allowed by the commissioners or justice or court before whom the prosecution shall be depending: penalty, ten pounds, to be recovered, levied, and paid in such manner and by such means as other penalties mentioned in this schedule may be recovered, levied, and paid. *Id. sch.* (L.) *s.* 14.

Cumulative penalty for sporting without certificate.] "If any person shall kill or take any game,—or use any dog, gun, net, or other engine or instrument for the purpose of searching for or killing or taking game,—such person not being authorized so to do for want of a game certificate:—he shall, on conviction thereof before two justices of the peace, forfeit and pay for every such offence such sum of money, not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction: provided always, that no person so convicted, shall by reason thereof be exempted from any penalty or liability under any statute or statutes relating to game certificates, but that the penalty imposed by this act shall be deemed to be a cumulative penalty." 1 & 2 *W.* 4, *c.* 32, *s.* 23.

Conviction;—*For that he the said A. O. on —— at, ——, did kill and take certain game, to wit, two pheasants,* [or *did use a certain dog, for the purpose of searching for, killing and taking game*], *the said A. O. not being then and there authorized so to do, for want of a game certificate: contrary to the*

statute in such case made and provided, and passed in the second year of the reign of his late Majesty King William the Fourth, intituled "An Act to amend the Laws in England relative to Game." And we do adjudge, &c., as in the form, *post*, p. 542, to the end.

4. *Unlawfully taking or killing Game.*

Who may take or kill game.] Every person who shall have obtained an annual game certificate, may kill and take game, subject always to an action, or to such other proceedings as are hereinafter mentioned, for any trespass by him committed in search or pursuit of game; but no game certificate, on which a less duty than 3*l.* 13*s.* 6*d.* is chargeable, shall authorize any gamekeeper to kill or take game, or use any dog, gun, &c. for the purpose of killing or taking game, except within the limits included in his appointment as gamekeeper; otherwise he may be proceeded against to all intents and purposes as if he had no game certificate. 1 & 2 *W.* 4, *c.* 32, *s.* 6.

By occupier of land, when not authorized.] "Where the right of killing the game upon any land is by this Act given to any lessor or landlord, in exclusion of the right of the occupier of such land,—or where such exclusive right hath been or shall be especially reserved by or granted to, or doth or shall belong to the lessor, landlord, or any person whatsoever, other than the occupier of such land—then and in every such case, if the occupier of such land shall pursue, kill, or take any game upon such land, or shall give permission to any other person so to do, without the authority of the lessor, landlord or other person having the right of killing the game upon such land, such occupier shall, on conviction thereof before two justices of the peace, forfeit and pay for such pursuit such sum of money not exceeding two pounds, and for every head of game so killed or taken such sum of money not exceeding one pound, as to the convicting justices shall seem meet, together with the costs of the conviction." *Id. s.* 12.

Conviction:—*For that he the said A. O. on* ——, *at* ——, *in the county aforesaid, being then and there the occupier of certain land there as tenant thereof to C. D., and not having the right of killing game on the said land, but the said right then and there belonging exclusively to the said C. D. his landlord, did then and there pursue, kill and take certain game, to wit, one hare, upon the said land, without the authority of the said C. D. his landlord as aforesaid, contrary to the statute in such case made and provided: and we do adjudge that the said A. O. shall, for the said offence, forfeit the sum of* [*three pounds*], *being the sum of* [*two pounds*] *for the pursuit as aforesaid,*

and after the rate of [*one pound*] *for the head of game so killed and taken as aforesaid; and shall forthwith,*" &c. as in the form *post*, p. 542, to the end.

By officers of the army.] "For the better preservation of game or fish in or near such places where any officers shall at any time be quartered, be it enacted, that every officer, who shall, without leave in writing from the persons entitled to grant such leave, take, kill, or destroy any game or fish in the United Kingdom of Great Britain and Ireland, and, upon complaint thereof, shall be, upon oath of one or more credible witnesses, convicted before any justice, shall for every such offence forfeit the sum of five pounds," 8 & 9 *Vict. c.* 8, (*Mutiny Act,*) *s.* 69, half to the informer if he be not a witness, and the other moiety or (where the offence shall be proved by the informer) the whole to be paid to the general agent for the recruiting service in London; and the justice shall within four days at the furthest report his adjudication to the Secretary at War. *Id. s.* 78. The penalty may be levied by distress; and in default of distress, the party may be committed and imprisoned for any time not exceeding "six months." 4 *Vict. c.* 2, *s.* 77.

Conviction, in the ordinary form, *ante*, p. 372 :—*That A. B., on* ——, *at* ——, *being then and there an officer in Her Majesty's army, did then and there take and kill certain game, to wit, one hare, without any leave in writing for so doing had or obtained from the person entitled to grant such leave; against the form of the statute in such case made and provided. Whereupon, &c.*

Killing game on Sunday or Christmas Day.] If any person shall "kill or take any game, or use any dog, gun, net, or other engine or instrument for the purpose of killing or taking any game, on a *Sunday* or *Christmas Day*:" penalty on conviction before two justices, not exceeding five pounds, together with the costs of the conviction. 1 & 2 *W.* 4, *c.* 32, *s.* 3.

Conviction :—*For that he the said A. O. on Sunday, the* —— *day of* ——, *in the year aforesaid, at* —— *in the county aforesaid, did kill and take certain game, to wit, one pheasant,* [or *did use a* dog, gun, net, or other engine or instrument, *for the purpose of then and there killing and taking game;*] *contrary to the statute in such case made and provided. And we do adjudge,* &c.

Killing game out of season.] If any person shall "kill or take any partridge between the 1st day of February and the 1st day of September in any year,—or any pheasant between the 1st day of February and the 1st day of October in any year,—or any black game (except in the county of Somerset or

Devon, or in the New Forest, in the county of Southampton), between the 10th day of December in any year, and the 20th day of August in the succeeding year, or in the county of Somerset or Devon, or in the New Forest aforesaid, between the 10th day of December in any year, and the 1st day of September in the succeeding year,—or any grouse, commonly called red game, between the 10th day of December in any year, and the 12th day of August in the succeeding year,—or any bustard between the 1st day of March and the 1st day of September in any year:" penalty, for every head of game so killed or taken, on conviction before two justices, a sum not exceeding 1*l.*, together with the costs of the conviction. *Id. s.* 3.

Conviction:—"*For that the said A. O. did between the —— day of —— last past, and the —— day of —— last past, to wit, on the* [*third day of June*], *in the year aforesaid, at ——, in the county aforesaid, kill and take four pheasants, contrary to the statute in such case made and provided: And we do adjudge that the said A. O. shall, for the said offence forfeit the sum of* [*four pounds*] *being after the rate of* [*one pound*] *for every head of game so killed and taken as aforesaid, and shall forthwith,*" &c. as in the form, *post*, p. 542, to the end.

And if any person licensed to deal in game, shall buy or sell, or knowingly have in his house, shop, stall, possession, or control, any bird of game, after the expiration of ten days (one inclusive and the other exclusive), from the respective days in each year on which it shall become unlawful to kill or take such birds of game respectively as aforesaid; or if any person, not licensed, shall buy or sell any bird of game after the expiration of ten days (one inclusive and the other exclusive), from the respective days in each year on which it shall become unlawful to kill or take such birds of game, or shall knowingly have in his house, possession, or control, any bird of game (except birds of game, kept in a mew or breeding-place) after the expiration of forty days (one inclusive and the other exclusive), from the respective days in each year on which it shall become unlawful to kill or take such birds of game: penalty, for every head of game so bought, or sold, or found, on conviction before two justices, a sum not exceeding 1*l.* together with the costs of the conviction. *Id. s.* 4.

Conviction:—"*For that he the said A. O., after the expiration of ten days from the first day of February, to wit, on the* [*fourth day of May*] *in the year aforesaid, at —— in the county aforesaid, being* [or *not being*] *then and there a person licensed to deal in game, did then and there buy* [or as the case may be] *certain birds of game, to wit, three partridges, contrary to the statute in such case made and provided: And we do adjudge that the said A. O. shall, for the said offence, forfeit the sum of* [*three pounds*], *being after the rate of* [*one pound*] *for every*

head of game so bought by the said A. O. as aforesaid; and shall forthwith," &c. as in the form, *post*, p. 542, to the end.

Laying poison to kill game.] If any person, with intent to destroy or injure game, shall at any time put or cause to be put any poison or poisonous ingredient on any ground, whether open or inclosed, where game usually resort, or in any highway: penalty, on conviction thereof before two justices, a sum not exceeding ten pounds, together with the costs of the conviction. *Id. s.* 3.

Conviction:—"*For that he the said A. O. on —— at ——, did put certain poison called —— on certain open* [or *inclosed*] *ground there, called ——, where game then usually resorted, with intent thereby then and there to destroy and injure the said game; contrary to the statute,*" &c, as *post*, p. 542.

Taking or destroying the eggs of game.] If any person, not having the right of killing the game upon any land, nor having permission from the person having such right, shall wilfully take out of the nest, or destroy in the nest, upon such land, the eggs of any bird of game, or of any swan, wild duck, teal, or widgeon; or shall knowingly have in his house, shop, possession, or control, any such eggs so taken: every such person shall, on conviction thereof before two justices of the peace, forfeit and pay for every egg so taken or destroyed, or so found in his house, shop, possession, or control, such sum of money, not exceeding five shillings, as to the said justices shall seem meet, together with the costs of the conviction. *Id. s.* 24.

Conviction for taking or destroying eggs:—"*For that he the said A. O., on —— at ——, in the county aforesaid, upon certain land there called ——, did unlawfully and wilfully take out of a certain nest, there being found, seven eggs of a certain bird of game called a pheasant; he the said A. O. not having then and there the right of killing game upon the said land, nor having permission in that behalf from any person having such right; contrary to the statute in such case made and provided: And we do adjudge that the said A. O. shall, for the said offence, forfeit the sum of* [*thirty-five shillings*], *being after the rate of* [*five shillings*] *for every egg so taken by the said A. O. as aforesaid, and shall forthwith,*" &c. as in the form, *post*, p. 542, to the end.

Conviction for having in his possession eggs so taken:—"*For that he the said A. O., on —— at ——, in the county aforesaid, did knowingly have in his possession seven eggs of a certain bird of game called a partridge, then lately before taken out of a nest upon certain land there situate, he the said A. O., at the time he had the said eggs in his possession as aforesaid, then and there well knowing that the same were so*

taken as aforesaid; and he the said A. O., at the time the said eggs were so taken as aforesaid, and at the time he so had them in his possession as aforesaid, not having the right of killing game upon the said land, nor having permission in that behalf from any person having such right; contrary to the statute," &c., as in the last form.

Trespass in the day-time in search of game.] If any person whatsoever shall commit any trespass, by entering or being, in the day-time (that is, from the beginning of the last hour before sunrise to the expiration of the first hour after sunset, *s.* 34), upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies; such person shall on conviction thereof before a justice of the peace, forfeit and pay such a sum of money, not exceeding 2*l.* as to the justices shall seem meet, together with the costs of the conviction. *Id. s.* 30.

Provided always, that any person charged with any such trespass, shall be at liberty to prove, by way of defence, any matter which would have been a defence to an action at law, for such trespass; save and except that the leave and licence of the occupier of the land so trespassed upon, shall not be a sufficient defence in any case where the landlord, lessor, or other person shall have the right of killing the game upon such land, by virtue of any reservation or otherwise, as hereinbefore mentioned; but such landlord, lessor, or other person shall, for the purpose of prosecuting for each of the two offences herein last before mentioned, be deemed to be the legal occupier of such land whenever the actual occupier thereof shall have given such leave or licence; and that the lord or steward of the crown of any manor, lordship, or royalty, or reputed manor, lordship, or royalty, shall be deemed to be the legal occupier of the land of the wastes or commons within such manor, lordship, or royalty, or reputed manor, lordship, or royalty. *Id. s.* 30.

It is not necessary in this case that the owner or occupier of the land should lay the information, or that it should be laid in his name, but it may be done by a common informer, as in other cases under this Act. *Middleton* v. *Gale et al.*, 1 *Wilm. W. & H.* 352. 8 *Ad. & El.* 155.

Conviction:—"*For that he the said A. O., on —— at ——, did commit trespass, by then and there in the day-time unlawfully entering upon* [or *being in*] *a certain close there situate, then being in the possession and occupation of one E. F., in search* [or *pursuit*] *of game; contrary to the statute in such case made and provided. And we do adjudge,* &c.

Where the conviction was for "entering and being," it was objected that this was a description of two offences, and that therefore the conviction was bad; Taunton, J. overruled the

objection, saying that entering and being upon the land was but one offence. *R.* v. *Mellor*, 2 *Dowl.* 173. In the same case, the conviction described the land as "certain land in the parish of Stoke-upon-Trent, in the county aforesaid, in the possession and occupation of Daniel Bird Baddeley," and it was objected that this description was too general; the land ought to have been described by its name, if it had any, or if it had not, it should be described by its locality with reference to other places that had names; but in this place it was not even called a close: Taunton, J. however, held the description to be sufficient. *Id.*

Trespass by five or more persons.] And if any persons, to the number of five or more together, shall commit any trespass, by entering or being, in the day time, upon any land in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies: each of such persons shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money not exceeding five pounds, as to the said justice shall seem meet, together with the costs of the conviction. *Id. s.* 30. *See the proviso under the last head, ante*, p. 523.

The conviction may be the same as the last form, to the words, "*And we do adjudge that the said A. O., E. F., G. H., I. K. and L. M. respectively shall for their said offence severally and respectively forfeit the sum of —— pounds each, and shall severally and respectively pay the said sum of —— pounds each, together with the sum of —— each for costs; and that in default of immediate payment of the said sums respectively, they the said A. O.* [*&c.*] *shall be imprisoned* [*and kept to hard labour*] *in the —— of —— for the space of —— each, unless the said sums respectively shall be sooner paid. And we direct that the said several sums of*," &c.

Trespass in Her Majesty's forests, &c.] And if any person whatsoever shall commit any trespass, by entering or being, in the day-time, upon any of his Majesty's forests, parks, chases, or warrens, in search or pursuit of game, without being first duly authorized so to do: on conviction thereof before a justice of the peace, penalty not exceeding two pounds, together with the costs of the conviction. *Id. s.* 33.

The conviction in this case may readily be framed from the form on sect. 30, *ante*, p. 523.

Trespassers not quitting the land and giving their address.] And where any person shall be found on any land, or upon any of His Majesty's forests, parks, chases, or warrens, in the day-time, in search or pursuit of game, or woodcocks, snipes, quails, landrails, or conies, it shall be lawful for any person having the right of killing the game upon such land, by virtue

of any reservation or otherwise as hereinbefore mentioned,—or for the occupier of the land, (whether there shall or shall not be any such right by reservation or otherwise,)—or for any gamekeeper or servant of either of them, or any person authorized by either of them,—or for the warden, ranger, verderer, forester, master-keeper, under-keeper, or other officer of such forest, park, chase, or warren,—to require the person so found forthwith to quit the land whereon he shall be so found, and also to tell his christian name, surname, and place of abode; and in case such person shall, after being so required, offend, by refusing to tell his real name or place of abode, or by giving such a general description of his place of abode, as shall be illusory for the purpose of discovery, or by wilfully continuing or returning upon the land, it shall be lawful for the party so requiring as aforesaid, and also for any person acting by his order and in his aid, to apprehend such offender, and to convey him or cause him to be conveyed as soon as conveniently may be before a justice of the peace; and such offender (whether so apprehended or not,) upon being convicted of any such offence before a justice of the peace, shall forfeit and pay such sum of money, not exceeding five pounds, as to the convicting justice shall seem meet, together with the costs of the conviction: provided always, that no person so apprehended shall, on any pretence whatsoever, be detained for a longer period than twelve hours from the time of his apprehension until he shall be brought before some justice of the peace; and that if he cannot, on account of the absence or distance of the residence of any such justice of the peace, or owing to any other reasonable cause, be brought before a justice of the peace within such twelve hours as aforesaid, then the person so apprehended shall be discharged, but may nevertheless be proceeded against for his offence by summons or warrant, according to the provisions hereinafter mentioned, as if no such apprehension had taken place. *Id. s.* 31. *See R.* v. *Long*, 7 *Car. & P.* 314.

Trespassers, armed, using violence, &c.] And "where any persons, to the number of five or more together, shall be found on any land, or in any of his Majesty's forests, parks, chases, or warrens, in the day-time, in search or pursuit of game or woodcocks, snipes, quails, landrails, or conies, any of such persons being then and there armed with a gun, and such persons or any of them shall then and there, by violence, intimidation, or menace, prevent or endeavour to prevent any person authorized as hereinbefore mentioned from approaching such persons so found, or any of them, for the purpose of requiring them or any of them to quit the land whereon they shall be so found, or to tell their or his christian name, surname, or place of abode respectively, as hereinbefore mentioned: every

person so offending by such violence, intimidation, or menace as aforesaid, and every person then and there aiding or abetting such offender, shall, upon being convicted thereof before two justices of the peace, forfeit and pay for every such offence such penalty, not exceeding five pounds, as to the convicting justices shall seem meet, together with the costs of the conviction; which said penalty shall be in addition to and independent of any other penalty to which any such person may be liable for any other offence against this Act." *Id. s.* 32.

Conviction:—"*For that they the said A. O., P. Q., R. S., T. V., and W. X., with other persons as yet unknown, to the number of five and more, on* ——, *at* ——, *in the county aforesaid, were found in the day-time of the said day together in a certain close there situate called* ——, *then in the possession and occupation of one E. F., in search of game, the said A. O., one of the persons aforesaid, being then and there armed with a gun; and the said A. O., P. Q., R. S., T. V., W. X., and the said other persons so unknown as aforesaid, whilst then and there together in the day-time, in the close aforesaid, and whilst the said A. O. was so then and there armed as aforesaid, did then and there by* [here state shortly the 'violence, intimidation, or menace,' used], *prevent one B. C. (the said B. C. being then and there gamekeeper and servant of the said E. F. the occupier of the said close as aforesaid,) from approaching them the said A. O.* [*&c.*] *for the purpose of requiring them to quit the said close, or to tell the christian names, surnames, or places of abode of them the said A. O.,* [*&c.*]; *contrary to the statute,*" &c.

Game may be taken from trespassers.] And when any person shall be found by day or by night upon any land, or in any of his Majesty's forests, parks, chases, or warrens, in search or pursuit of game, and shall then and there have in his possession any game which shall appear to have been recently killed, it shall be lawful for any person, having the right of killing the game upon such land, by virtue of any reservation or otherwise, as hereinbefore mentioned, or for the occupier of such land (whether there shall or shall not be any such right by reservation or otherwise,) or for any gamekeeper or servant of either of them, or for any officer as aforesaid of such forest, park, chase or warren, or for any person acting by the order and in aid of any of the said several persons, to demand from the person so found such game in his possession; and in case such person shall not immediately deliver up such game, to seize and take the same from him, for the use of the person entitled to the game upon such land, forest, park, chase, or warren. *Id. s.* 36.

Who not trespassers, within this Act.] "The aforesaid pro-

visions against trespassers and persons found on any land, shall not extend to any person hunting or coursing upon any lands with hounds or greyhounds, and being in fresh pursuit of any deer, hare, or fox already started upon any other land; nor to any person *bonâ fide* claiming and exercising any right or reputed right of free warren or free chase; nor to any gamekeeper lawfully appointed within the limits of any free warren or free chase; nor to any lord or any steward of the crown of any manor, lordship or royalty, or reputed manor, lordship or royalty, nor to any gamekeeper lawfully appointed by such lord or steward, within the limits of such manor, lordship or royalty, or reputed manor, lordship, or royalty." *id. s.* 35.

Killing hares or conies in warrens, &c.] "If any person shall unlawfully and wilfully, in the night-time, take or kill any hare or coney in any warren or ground lawfully used for the breeding or keeping of hares or conies, (whether the same be inclosed or not): every such offender shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly. And if any person shall unlawfully and wilfully, in the day-time, take or kill any hare or coney in any warren or ground, or shall at any time set or use therein any snare or engine for the taking of hares or conies: every such offender, being convicted thereof before a justice of the peace, shall forfeit and pay such sum of money, not exceeding 5*l.*, as to the justice shall seem meet.—Provided always, that nothing herein contained shall affect any person taking or killing, in the day-time, any conies on any sea bank or river bank in the county of Lincoln, so far as the tide shall extend, or within one furlong of such bank. 7 & 8 *G.* 4, *c.* 29, *s.* 30.

Commitment for taking and killing conies, &c., in the night: —*On —— in the night-time of the said day, at ——, in a certain warren and ground of C. D. there situate, and then lawfully used for the breeding and keeping of conies* [or *hares*] *did, by night as aforesaid, in the said warren and ground, unlawfully and wilfully take* [*and kill*] *three conies* [or *hares*] *then and there being found; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Conviction for taking or killing in the day-time:—*Kent to wit: Be it remembered, that on the —— day of ——, in the year of our Lord ——, at ——, in the county of ——, A. O. is convicted before me, J. P., one of Her Majesty's justices of the peace for the said county, for that he the said A. O., on ——, in the year aforesaid, about the hour of three in the afternoon of the same day, at ——, in a certain warren and ground of E. F. there situate, (not being any sea bank or river bank in the county of Lincoln, so far as the sea extends, or within one furlong of such bank), then lawfully used for the breeding and keep-*

ing of conies [or *hares,*] *did, in the day-time as aforesaid, in the said warren and ground unlawfully and wilfully take* [*and kill*] *two conies* [or *hares*] *then and there being found; contrary to the statute in such case made and provided: I the said J. P. do therefore adjudge the said A. O., for his said offence, to forfeit and pay the sum of* [*three*] *pounds, and also to pay the sum of —— shillings* for costs, and I order that the said sum shall be paid by the said A. O. on or before the —— day of —— next; and I direct that the said sum of three pounds shall be paid to G. H.* (see stat. 7 & 8 G. 4, c. 29, s. 66,) *of —— aforesaid, in which the said offence was committed, to be by him applied according to the directions of the statute in that case made and provided; and I order that the said sum of ——, shillings for the costs shall be paid to ——* (the complainant). *Given under my hand and seal the day and year above-mentioned.*

J. P.

* If time be not given for payment of the penalty, &c. the form of the conviction may be the same as the above, to the* "*for costs; and in default of immediate payment, to be imprisoned in the ——* [*and there kept to hard labour*] *for the space of one calendar month, unless the said sum shall be sooner paid; and I direct that the said sum of three pounds shall be paid to G. H., of,*" &c., as in the above form, to the end.

Conviction for setting snares or engines: same as the last form to the words—*for that the said A. O., on —— at ——, in the county aforesaid, in a certain warren and ground of E. F. there situate, then lawfully used for the breeding and keeping of conies* [or *hares,*] *unlawfully and wilfully did set one snare* [or *engine called.——*] *for the taking of conies* [or *hares,*] *for the purpose of then and there taking conies* [or *hares*] *in the said warren and ground; contrary to the form of the statute in that case made and provided: I the said J. P. do therefore adjudge,* &c. as in the last form to the end.

Where it appeared that the prisoner set several wires in a warren, for the purpose of catching rabbits, and a rabbit was caught in one of them; the prisoner afterwards came to the warren, and just as he was about to take up the rabbit, the warrener seized him: all the judges but one held that the catching was a taking within the meaning of the statute; and that to constitute this offence, it did not require such a taking as was necessary to constitute larceny. *R.* v. *Glover, R. & Ry.* 269. Where upon an indictment on the first part of the above section, it appeared that the prosecutor kept rabbits, which ran about loose in his rick yard, and that they had been destroyed by poison in the night-time: Patteson, J. held that it was not a case within the statute; the statute only applied to places commonly called rabbit-warrens, and not to places where a few rabbits might be kept. *R.* v. *Garratt et al.*, 6 *Car. & P.* 369.

5. *Night poaching.*

Taking, &c. game in the night.] If any person shall, by night, [that is, from the expiration of the first hour after sunset, until the beginning of the last hour before sunrise, *sect.* 12,] "unlawfully take or destroy any game or rabbits, in any land, whether open or inclosed;—or shall, by night, unlawfully enter or be in any land, whether open or inclosed, with any gun, net, engine, or other instrument, for the purpose of taking or destroying game:—such offender shall, upon conviction thereof before two justices of the peace, be committed for the first offence to the common gaol or house of correction, for any period not exceeding three calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognizance, or in Scotland by bond of caution, himself in ten pounds, and two sureties in five pounds each, or one surety in ten pounds, for his not so offending again for the space of one year next following; and in case of not finding such sureties, shall be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties are sooner found." 9 *G.* 4, *c.* 69, *s.* 1.

And by stat. 7 & 8 Vict. c. 29, after reciting this Act of 9 G. 4, c. 69, it is enacted (by sect. 2,) that all the pains, punishments, and forfeitures imposed by the said Act upon persons by night unlawfully taking or destroying any game or rabbits in any land, open or inclosed, as therein set forth, shall be applicable to and imposed upon any person by night unlawfully taking or destroying any game or rabbits on any public road, highway, or path, or the sides thereof, or at the openings, outlets or gates from any such land into any such public road, highway, or path, in the like manner as upon any such land, open or inclosed; and it shall be lawful for the owner or occupier of any land adjoining either side of that part of such road, highway, or path where the offender shall be, and the gamekeeper or servant of such owner or occupier, and any person assisting such gamekeeper or servant, and for all the persons authorized by the said Act to apprehend any offender against the provisions thereof, to seize and apprehend any person offending against the said Act or this Act: and the said Act, and all the powers, provisions, authorities, and jurisdictions therein or thereby contained or given, shall be as applicable for carrying this Act into execution, as if the same had been herein specially set forth.

Game, within the meaning of these Acts, shall be deemed to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. 9 *G.* 4, *c.* 69, *s.* 12.

Conviction for taking game by night:—*Kent: Be it remembered, that on the —— day of ——, in the year of our Lord ——, at ——, in the county of Kent, A. O. is convicted before*

us, A. B. and C. D., two of Her Majesty's justices of the peace for the said county, for that he the said A. O., within six calendar months now last past, to wit on ——, in the night of the said day, at ——, did by night as aforesaid unlawfully take and destroy certain game, to wit, one partridge, in certain inclosed land of [or *in the occupation of*] *one E. F. there situate, called ——* [or, *on a certain public highway there called ——*, or *leading from —— to ——*," or as the case may be, within the above stat. 7 & 8 Vict. c. 29]; *contrary to the form of the statute in that case made and provided: and we the said justices adjudge the said A. O., for his said offence, to be imprisoned in the —— at ——, and there kept to hard labour for the period of* [*two*] *calendar months, and at the expiration of such period, to find sureties, by recognizance, himself in the sum of ten pounds, and two sureties in the sum of five pounds each, or one surety in the sum of ten pounds, conditioned that he the said A. O. shall not so offend again for the space of one year then next following; and we further adjudge the said A. O., in case he shall not find such sureties as aforesaid, to be further imprisoned and kept to hard labour for the space of six calendar months, unless such sureties shall be sooner found. Given under our hands, the day and year first above-mentioned.*

Conviction for entering land, to take game by night; same as in the last form, to the words [*for that he the said A. O., did, within six calendar months now last past, to wit, on ——, in the night-time of the said day, at ——, unlawfully enter certain inclosed land of* [or *in the occupation of*] *one E. F. there situate, called ——, and was then and there by night as aforesaid unlawfully in the said land, with a certain* [*gun*], *for the purpose then and there of taking and destroying game therein; against the form,*] &c. as in the last form. It must appear that the party intended to take or destroy game in that very close, &c. in which he is proved to have been; *See R.* v. *Barham, Ry.* & *M.* 151. *R.* v. *Capwell and Pegg*, 5 *Car.* & *P.* 549. *R.* v. *Gainer*, 7 *Car.* & *P.* 231; and that must be stated in the conviction. *Fletcher* v. *Calthorp et al.*, 14 *Law J.* 49, *m.*

Where a commitment upon such a conviction omitted the day of the date of it, it being dated thus: "—— day of October, in the year of our Lord 1843,"—Patteson, J., held it to be bad, and the defendant was ordered to be discharged. *R.* v. *Fletcher*, 13 *Law J.* 16, *m.* 1 *Dowl.* & *Lo.* 726. So, where the commitment ordered the defendant to be imprisoned until he should find sureties and enter into a recognizance that he should not offend again for the space of one year,—instead of that he should not *so* offend again,—it was holden bad. *R.* v. *Reynolds et al.*, 13 *Law J.* 65, *m.* 1 *Dowl.* & *Lo.* 846.

Second offence.] "And in case such person shall so offend

a second time, and shall be thereof convicted before two justices of the peace, he shall be committed to the common gaol or house of correction, for any period not exceeding six calendar months, there to be kept to hard labour, and at the expiration of such period shall find sureties by recognizance or bond as aforesaid, himself in twenty pounds, and two sureties in ten pounds each, or one surety in twenty pounds, for his not so offending again for the space of two years next following; and in case of not finding such sureties, shall be further imprisoned and kept to hard labour, for the space of one year, unless such sureties are sooner found. 9 *G.* 4, *c.* 69, *s.* 1.

Conviction as in the form, *ante*, p. 529 :]—*for that he the said A. O., having heretofore, to wit, on* ——, *at* ——, *been duly convicted before G. H. and I. K., two of Her Majesty's justices of the peace for the county of* ——, *for that the said A. O., on the* —— *day of* ——, *in the year last aforesaid, in the night of the same day, at* ——, *in the said last-mentioned county, did, by night as aforesaid, unlawfully take and destroy certain game, to wit, two pheasants, in certain inclosed land there situate,* [or as the offence may have been], *contrary to the form of the statute in such case made and provided; and having been therefore then and there adjudged, for his said last-mentioned offence, to be imprisoned* [&c. as in the former conviction to the end] : *he the said A. O., being so convicted as aforesaid, afterwards and within six calendar months now last past, to wit, on* ——, &c. as in either of the last two forms, to the end.

Third offence.] "And in case such person shall so offend a third time:" misdemeanor, transportation for seven years, or imprisonment and hard labour in the common gaol or house of correction for not more than two years. 9 *G.* 4, *c.* 69, *s.* 1.

The commitment may describe the offence in the same manner as in either of the forms of conviction, *ante*, p. 529, 472, adding, after the words *against the form of the statute in such case made and provided, he the said A. O. having before then been twice convicted for the like offence. And you the said keeper*, &c.

Three or more, armed, taking game in the night.] If any persons to the number of three or more together, shall by night, [that is, from the expiration of the first hour after sunset, until the beginning of the last hour before sunrise, *sect.* 12,] unlawfully enter or be in any land, whether open or inclosed, for the purpose of taking or destroying game or rabbits, any of such persons being armed with any gun, cross-bow, fire-arms, bludgeon, or any other offensive weapon:"

misdemeanor, transportation for not more than fourteen nor less than seven years, or imprisonment and hard labour for not more than three years. 9 *G.* 4, *c.* 69, *s.* 9. It must appear that the parties intended to take or destroy game in that very close, &c. in which they are proved to have been. *R.* v. *Barham, Ry.* & *M.* 151. *R.* v. *Capwell* & *Pegg*, 5 *Car.* & *P.* 549. *R.* v. *Gainer*, 7 *Car.* & *P.* 231. And where two entered a preserve, and two others remained outside, but they were all of the same party, and all there for the same joint purpose, it was holden that all might be found guilty. *R.* v. *Lockett*, 7 *Car.* & *P.* 300. *R.* v. *Passey*, *Id.* 282. *R.* v. *Worker*, *Ry.* & *M.* 165. And if there be three persons thus engaged in a joint purpose of night poaching, if any one of them be armed, they are all deemed to be armed, within the meaning of the Act. *R.* v. *Goodfellow et al.*, 1 *Car.* & *K.* 724. As to the meaning of the word "game" here, see *sect.* 13, *ante*, p. 529. Large stones, capable of doing serious injury, and brought to the place for the purpose by the poachers, are offensive weapons within this section. *R.* v. *Grice et al.*, 7 *Car.* & *P.* 803.

The offender is to be tried before "the justices of gaol delivery;" *Id.*; and of course the court of quarter sessions have no jurisdiction of this offence.

Commitment:—*For that they the said A. B.* [&c.] *together with divers other evil disposed persons unknown, on* ——, *about the hour of eleven in the night of the same day, at* ——, *being then and there respectively armed with* [*guns*], *did then and there together, by night as aforesaid, and armed as aforesaid, unlawfully enter certain inclosed land then in the occupation of one C. D. there situate, and were then and there by night as aforesaid together unlawfully in the said land, for the purpose then and there of taking and destroying game; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Who may apprehend offenders.] Where any person shall be found upon any land, committing any such offence as hereinbefore mentioned, it shall be lawful for the owner or occupier of such land,—or for any person having a right or reputed right of free warren or free chase thereon,—or for the lord of the manor or reputed manor wherein such land may be situate,—and also for any gamekeeper or servant of any of the persons herein mentioned, or any persons assisting such gamekeeper or servant,—to seize and apprehend such offender upon such land, or, in case of pursuit being made, in any other place to which he may have escaped therefrom, and to deliver him as soon as may be, into the custody of a peace-officer, in order to his being conveyed before two justices of the peace. 9 *G.* 4, *c.* 69, *s.* 2. This section has reference to the offences described in the first section, *ante*, p. 529. But where a gamekeeper

attempted to apprehend one of several persons, who were on land at night, armed under such circumstances as to bring them within the ninth section, *ante*, p. 531, the court held that the gamekeeper was warranted in doing so under this section, as in committing the offence within the ninth section, the offender also commits an offence within the first. *R.* v. *Ball, Ry. & M.* 330. It may be necessary to mention, that a person appointed as a watcher, is within the meaning of this clause. *R.* v. *Price*, 7 *Car. & P.* 178. It must appear however that the offender had done some act "by night," so as to bring him within the meaning of the first section; otherwise the party will not be justified in apprehending him under this section. *R.* v. *Tomlinson*, 7 *Car. & P.* 183.

Offenders using violence to those who apprehend them.] "And in case such offender shall assault or offer any violence with any gun, cross-bow, fire-arms, bludgeon, stick, club, or any other offensive weapon whatsoever, towards any person hereby authorized to seize and apprehend him, he shall, whether it be his first, second, or any other offence, be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the court, to be transported beyond seas for seven years, or to be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding two years." 9 *G.* 4, *c.* 69, *s.* 2.

Commitment:—*For that the said A. B. before and at the time of committing the assault hereinafter mentioned, to wit, on ——, in the night of the same day, at ——, did by night as aforesaid unlawfully enter certain inclosed land of one C. D. there situate, and was then and there by night unlawfully in the said land, with a certain* [*gun*], *for the purpose of then and there taking and destroying game, and was then and there found by one E. F., the gamekeeper of the said C. D., who had then and there lawful authority to seize and apprehend him; and that he the said A. B. then and there* [*with the gun aforesaid*] *did then and there unlawfully assault and beat, and offer violence towards the said E. F., he the said E. F. then and there being lawfully authorized to seize and apprehend the said A. B.; against the form of the statute in such case made and provided. And you the said keeper*, &c.

Prosecutions, &c.] The prosecutions for offences within this Act, punishable upon summary conviction, must be commenced within six calendar months after their commission; and for those punishable upon indictment, within twelve calendar months. 9 *G.* 4, *c.* 69, *s.* 4. And the prosecution for the indictable offence is said to be commenced, as soon as the party is committed to gaol upon the charge. *R.* v. *Austin*, 1 *Car. & K.* 621. For offences punishable upon summary conviction, a justice of peace may in the first instance

grant his warrant to apprehend the offender, and to bring him before two justices. *Id. s.* 3.

The 5th section of the statute gives a form of conviction, which is the same as the form *ante*, p. 529. And by sect. 8, on every conviction under this Act for a first or second offence, the convicting justices shall return the same to the next quarter sessions for the county, riding, division, city, or place wherein such offence shall have been committed; and the record of such conviction, or any copy thereof, shall be evidence in any prosecution to be instituted against the party, thereby convicted, for a second or third offence; and the clerk of the peace shall immediately on such return make or cause to be made a memorandum of such conviction in a register to be kept by him of the names and places of abode of the persons so convicted, and shall state whether such conviction be the first or second conviction of the offending party.

Against convictions, the party may appeal to the next general or quarter sessions which shall be holden not less than 12 days after the day of conviction, for the county, riding, or division, wherein the cause of complaint shall have arisen, provided the party give notice of appeal three days after conviction, and seven days before the sessions, and shall either remain in custody, or within such three days shall enter into a recognizance with a sufficient surety, "conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be awarded by the court." *Id. s.* 6.

No conviction, however, shall be quashed for want of form, or be removed by *certiorari*; and no warrant of commitment shall be deemed void for any defect, if it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. *Id. s.* 7.

6. *Dealing in Game.*

Licence to deal in game.] The justices of the peace of every county, riding, division, liberty, franchise, city, or town, shall hold a special session in the division or district for which they usually act, in the month of July, in every year, for the purpose of granting licences to deal in game, of the holding of which sessions seven days' notice shall be given to each of the justices acting for such division or district; "and the majority of the justices assembled at such sessions or at some adjournment thereof, not being less than two, are hereby authorized (if they shall think fit) to grant under their hands, to any person, being a householder or keeper of a shop or stall within such division or district, and not being an innkeeper or victualler, or licensed to sell beer by retail, not being the owner, guard, or driver of any mail-coach or other vehicle employed in the conveyance of the mails of letters, or of any stage-

coach, stage-waggon, van, or other public conveyance, nor being a carrier or higgler, nor being in the employment of any of the above-mentioned persons,—a licence according to the form in the schedule (A.) annexed to this Act, empowering the person to whom such licence shall be so granted, to buy game at any place from any person who may lawfully sell game by virtue of this Act, and also to sell the same at one house, shop, or stall only, kept by him; provided that every person, while so licensed to deal in game as aforesaid, shall affix to some part of the outside of the front of his house, shop, or stall, and shall there keep, a board, having thereon in clear and legible characters his christian name and surname, together with the following words, (that is to say,) '*Licensed to deal in game;*' and every such licence shall continue in force for the period of one year next after the granting thereof." 1 & 2 *W.* 4, *c.* 32, *s.* 18.

But by stat. 2 & 3 Vict. c. 35, s. 4, after reciting that by the above stat. 1 & 2 W. 4, c. 32, it is enacted, that the justices of the peace shall hold a special session in the month of July in every year, for the purpose of granting licences to deal in game; and it is expedient that they should be empowered to hold a special session for the purpose aforesaid, not only in the month of July, but also at any subsequent period of the year: it is therefore enacted, that "from and after the passing of this Act, it shall be lawful for the said justices of the peace to hold, in their respective divisions or districts, a special sessions for the purpose of granting licences to deal in game, not only in the month of July, but also at any time and from time to time as often as they shall think fit after the said month of July in every year; and it shall also be lawful for the majority of the said justices (not being less than two), assembled at any such session or at any adjournment thereof, to grant licences to deal in game, in the manner directed by the said last-recited Act, and under and subject to the provisions and regulations thereof; provided always, that of the holding of any such special session seven days' notice shall be given to each of the justices acting for the division or district in which such session is intended to be held; provided also, that every licence to deal in game, at whatever time the same hath been or shall be granted, shall continue in force from the granting thereof until the first day of July then next following, and no longer."

The following is the form of the licence:—

At a special sessions of the justices of the peace of the county of ——, [or *riding*, &c. as the case may be,] *acting for the division of* [or otherwise, as the case may be,] *in the said county, holden at* ——, *in the said* ——, *on the* —— *day of* ——, *in the year* ——: *We* ——, *being* —— *justices acting for the said* ——, *assembled at the said special session, do hereby*

authorize and empower A. B. of ——, [here insert the name, description, and place of residence, and if more than one in partnership say *C. D.* of, &c. and *E. F.* of, &c. *being partners*], *being a householder* [or *householders*], *or keeper*, [or *keepers*] *of a shop or stall*, [as the case may be], *to buy game from any person authorized to sell game by virtue of an Act passed in the second year of the reign of King William the Fourth, intituled "An Act to amend the Laws in England relative to Game;" and we do also authorize and empower the said A. B.* [or *C. D. and E. F. being partners*] *to sell at his* [or *their*] *house* [*shop or stall*] *any game so bought, provided that the said A. B.* [or *C. D. and E. F. being partners*] *shall affix to some part of the outside of the front of his* [or *their*] *house* [*shop or stall*], *and shall there keep, a board having thereon in clear and legible characters, his christian name and surname,* [or *their christian names and surnames,*] *together with the following words, "Licensed to deal in game."*

This licence will expire on ——.

(*Signed*) *Justice of the Peace,*
Justice of the Peace.

Party licensed, to take out certificate.] Every person, licensed to deal in game, shall annually and during the continuance of his licence, and before he shall be empowered to deal in game under such licence, obtain a certificate, every such certificate to be in force for the same period as such licence, on payment of a duty of 2*l.* to the collector of the assessed taxes for the parish, township, or place in which the person so licensed shall reside, in like manner as the duties on game certificates are by law payable; and if "any person obtaining a licence under this Act shall purchase or sell or otherwise deal in game, as a licensed dealer under this Act, before he shall obtain a certificate," penalty, twenty pounds; *Id. s.* 19; to be sued for, recovered, and levied, either in the district in which the offence shall be committed, or in the district in which the offender shall reside, and be applied, in the same manner, and under the same rules, regulations, and provisions, as penalties on persons doing acts without payment of the game duty, or neglecting to obtain game certificates. 1 & 2 *W.* 4, *c.* 32, *s.* 20.

Persons being in partnership.] Persons being in partnership, and carrying on their business at one house, shop, or stall only, shall not be obliged to take out more than one licence. *Id. s.* 21.

Who may sell game.] Every person, who shall have obtained an annual game certificate, may sell game to any person licensed to deal in game, according to the provisions hereinafter men-

tioned: but no game certificate on which a less duty than 3*l.* 13*s.* 6*d.* is chargeable, shall authorize any gamekeeper to sell any game, except on the account and with the written authority of his master. *Id. s.* 17.

"If any person, not having obtained a game certificate, (except such person be licensed to deal in game according to this Act,) shall sell or offer for sale any game to any person whatsoever;—or if any person authorized to sell game under this Act by virtue of a game certificate, shall sell or offer for sale any game to any person whatsoever, except a person licensed to deal in game according to this Act:—every such offender shall, on conviction of any such offence before two justices of the peace, forfeit and pay for every head of game so sold or offered for sale such sum of money, not exceeding two pounds, as to the said justices shall seem meet, together with the costs of the conviction." *Id. s.* 25.

Conviction for selling game without a certificate or licence:—"*For that he the said A. O., on the —— day of ——, in the year aforesaid, at —— in the county of ——, did sell* [or *offer for sale*] *to one C. B., certain game, to wit, three hares; he the said A. O., at the time he so sold the same as aforesaid, not having obtained and not having a game certificate, and not being then and there a person licensed to deal in game according to the form of the statute in that case made and provided. And we do adjudge that the said A. O. shall, for the said offence, forfeit the sum of* [*three pounds*], *being after the rate of* [*one pound*] *for every head of game so sold by the said A. O. as aforesaid, and shall forthwith,*" &c. as in the form, *post*, p. 542, to the end. *See sect.* 29, *post*.

Conviction for selling to other than licensed dealers:—"*For that he the said A. O., on the —— day of ——, in the year aforesaid, at —— in the county of ——, being then and there a person authorized by law to sell game by virtue of a game certificate,* [*but not having any licence to deal in game,*] *did then and there sell* [or '*offer for sale*'] *to one C. B., certain game, to wit, three hares, he the said C. B., then and there not being a person licensed to deal in game according to the form of the statute in such case made and provided; contrary to the form of the statute,*" &c., as in the last form. It may be prudent to negative the seller having a licence to deal in game, as in the above form, though not in strictness required by the words of the above section. It is not necessary to negative his being an innkeeper, &c. within the next section.

But an innkeeper or tavernkeeper, without any such licence, may sell game for consumption in his own house, such game having been procured from some person licensed to deal in game by virtue of this Act, and not otherwise. *Id. s.* 26.

Also, the buying and selling of game by any person or persons employed on the behalf of any licensed dealer in game, and acting in the usual course of his employment, and upon the premises where such dealing is carried on, shall be deemed to be a lawful buying and selling, in every case where the same would have been lawful if transacted by such licensed dealer himself: also nothing herein contained shall prevent any licensed dealer in game from selling any game, which shall have been sent to him to be sold on account of any other licensed dealer in game. *Id. s.* 29.

Buying game from other than licensed dealers.] "If any person, not being licensed to deal in game according to this Act, shall buy any game from any person whatsoever, except from a person licensed to deal in game according to this Act, or *bonâ fide* from a person affixing to the outside of the front of his house, shop, or stall, a board purporting to be the board of a person licensed to deal in game: every such offender shall, on conviction thereof before two justices of the peace, forfeit and pay for every head of game so bought, such sum of money, not exceeding five pounds, as to the said justices shall seem meet, together with the costs of the conviction." *Id. s.* 27.

Conviction:—"*For that he the said A. O., on the —— day of ——, in the year aforesaid, at ——, in the county of ——, not being then and there licensed to deal in game according to the statute in such case made and provided, did then and there buy certain game, to wit, two pheasants and two partridges, from one J. B.; he the said J. B. not being then and there a person licensed to deal in game according to the statute in such case made and provided, and not having affixed to the outside of the front of his house, shop, or stall, a board purporting to be the board of a person licensed to deal in game; contrary to the form of the statute in such case made and provided: And we do adjudge that the said A. O. shall, for the said offence, forfeit the sum of* [*twelve pounds*], *being after the rate of* [*three pounds*] *for every head of game so bought by the said A. O., as aforesaid, and shall forthwith,*" &c., as in the form, *post*, p. 542, to the end.

Offences by licensed dealers, &c.] "If any person, being licensed to deal in game according to this Act, shall buy or obtain any game from any person not authorized to sell game for want of a game certificate, or for want of a licence to deal in game; or if any person, being licensed to deal in game according to this Act, shall sell or offer for sale any game at his house, shop, or stall, without such board as aforesaid being affixed to some part of the outside of the front of such house,

shop, or stall, at the time of such selling or offering for sale, or shall affix or cause to be affixed such board to more than one house, shop, or stall, or shall sell any game at any place other than his house, shop, or stall, where such board shall have been affixed; or if any person, not being licensed to deal in game according to this Act, shall assume or pretend, by affixing such board as aforesaid, or by exhibiting any certificate, or by any other device or pretence, to be a person licensed to deal in game:—every such offender, being convicted thereof before two justices of the peace, shall forfeit and pay such sum of money, not exceeding ten pounds, as to the said justices shall seem meet, together with the costs of the conviction." *Id. s.* 28.

Conviction of licensed dealer, buying from other than licensed persons:—"*For that he the said A. O., on the —— day of ——, in the year aforesaid, at ——, in the county of ——, being a person then and there duly licensed to deal in game, did then and there buy and obtain certain game, to wit, three hares, from one C. B., the said C. B. then and there not being authorized to sell game, for want of a game certificate, and for want of a licence to deal in game; contrary to the form,*" &c., as in the form, *post*, p. 542, to the end.

Conviction of licensed dealer for selling game, without a board affixed to his shop, &c.:—"*For that he the said A. O., on the —— day of ——, in the year ——, at ——, in the county of ——, being a person then and there duly licensed to deal in game, did then and there sell* [or '*offer for sale*'], *certain game, to wit, two hares, at his house there* ['house, shop, or stall'] *without any board being then affixed to any part of the outside of the front of the said house, having thereon the christian name and surname of the said A. O., and the words 'Licensed to deal in game;' contrary to the form,*" &c., as in the form, *post*, p. 542, to the end. From this may readily be framed convictions for affixing boards on more than one shop, &c., or selling game at any other place than where such board is affixed. *Vide supra.*

Conviction of unlicensed person for pretending to be licensed:—"*For that he the said A. O., on the —— day of ——, in the year aforesaid, at ——, in the county of ——, not being then and there licensed to deal in game, according to the statute in such case made and provided, did then and there, by affixing a board, on which were the words ——, to the outside of the front of his shop there,* [if by any other 'device or pretence,' state what,] *assume and falsely pretend that he was then and there a person licensed to deal in game; contrary to the form,*" &c., as in the form, *post*, p. 542.

In what case licence to become void.] If any person licensed by virtue of this Act to deal in game, shall during the period

of such licence be convicted of any offence whatever against this Act, such licence shall thereupon become null and void. *Id. s.* 22.

7. *Proceedings for Penalties under Stat.* 1 & 2 *W.* 4, *c.* 32.

Limitation.] Prosecutions shall be commenced within three calendar months after the commission of the offence. *Id. s.* 41.

Information.] By stat. 6 & 7 W. 4, c. 65, s. 9, (reciting that by stat. 1 & 2 W. 4, c. 32, it was enacted that where any person shall be charged on the oath of a credible witness with any offence punishable upon summary conviction by virtue of the said last-mentioned Act before a justice of the peace, the justice may summon the party charged to appear before himself or any one or two justices of the peace, as the case may require, at a time and place to be named in such summons; and if such party shall not appear accordingly, then the justice or justices may proceed in the case, in the manner directed by the said Act; and it is expedient to explain and amend the said enactment, as hereinafter mentioned:) it is enacted and declared, that upon any information made or exhibited before a justice of the peace of any such offence as aforesaid, it shall not be necessary that the charge contained in such information, should be made on the oath of the informer or prosecutor in such case; provided that before any proceeding shall be had or taken upon such information, either for summoning the party accused or compelling his appearance to answer the same, the charge contained in such information shall be deposed to on the oath of some other person or persons being credible witnesses. The form of the information may be thus:—

Berks, to wit: Be it remembered that within three calendar months next after the commission of the offence hereinafter mentioned, to wit, on the —— day of ——, in the year of our Lord ——, at —— in the said county, C. D. of ——, in the county aforesaid, yeoman, personally cometh before me, J. P., one of Her Majesty's justices of the peace in and for the said county, and giveth me to understand and be informed that A. B. of ——, labourer, on —— at ——, [did commit trespass, by then and there in the day-time unlawfully entering upon a certain close there situate, then being in the possession and occupation of one E. F., in search of game; or as the case may be, describing the offence as in a conviction for the same;] *contrary to the statute in such case made and provided; whereby and by force of the statute in such case made and provided, the said A. B. hath forfeited for his said offence the sum of ——. Wherefore the said C. D. prayeth the consideration of me the said justice in the premises, and that the said A. B. may be convicted of the*

offence aforesaid, and that the said A. B. may be summoned to appear before me and answer the premises, and make his defence thereto.

Exhibited before me by C. D. the day and year first above written. *J. P.*

On the back of the information write a deposition of verification thus:—

Berks. The examination and deposition of E. F. of ——, labourer, taken on oath this —— day of ——, before me J. P., one of Her Majesty's justices of the peace in and for the county aforesaid, touching the offence in the within information mentioned.

The said E. F. upon his oath saith, that the within information is true in substance and matter of fact; and that A. B. of ——, labourer, on —— at ——, did commit trespass by then and there in the day-time [&c. to the end of the statement of the offence, as in the information.]

Taken and sworn before me the day and year above mentioned. *J. P.*

Where the information stated that it was verified by the oath of Wm. Atkinson, and the prosecutor and Atkinson signed it, and then the justice wrote at the bottom, "exhibited by O. M." (the prosecutor) "and sworn before me the day and year above written," and then signed it: this was holden to be bad, because it did not appear who was sworn, or that there was a deposition at all. *R.* v. *Scotton*, 13 *Law J.* 58, *m*, 5 *Q. B.* 493.

Summons, &c.] The justice may summon the party charged, to appear before himself, or any one or two justices of the peace, as the case may require, at a time and place to be named in such summons; and if such party shall not appear accordingly, then (upon proof of the due service of the summons by delivering a copy thereof to the party, or by delivering such copy at the party's usual place of abode to some inmate thereat, and explaining the purport thereof to such inmate), the justice or justices may either proceed to hear and determine the case in the absence of the party, or may issue his or their warrant for apprehending and bringing such party before him or them, as the case may be; or the justice before whom the charge shall be made, may, if he shall have reason to suspect from information upon oath that the party is likely to abscond, issue such warrant in the first instance without any previous summons. 1 & 2 *W.* 4, *c.* 32, *s.* 41.

Witnesses.] Any justice may issue his summons, requiring any person to appear before himself, or any one or two justices of the peace, for the purpose of giving evidence touching

any offence against this Act; and if any person so summoned shall neglect or refuse to appear, and no reasonable excuse for his absence shall be proved, or if any person appearing in obedience to such summons shall refuse to be examined on oath touching any such offence, then, on conviction thereof, before the said justice or justices, or any other justice or justices of the peace, penalty, not exceeding five pounds. *Id. s.* 40.

Evidence.] It shall not be necessary in any proceeding against any person under this Act, to negative by evidence any certificate, licence, consent, authority, or other matter of exception or defence; but that the party seeking to avail himself of any such certificate, licence, consent, authority, or other matter of exception or defence, shall be bound to prove the same. *Id. s.* 42.

Whenever it is necessary to prove the purpose for which a party entered or was upon land, such facts and circumstances must be proved, from which the party's purpose may fairly be implied; for a purpose, like an intent, can only be proved from the overt acts of the party, or his admissions.

Conviction.] The conviction may be in the following form, or "in any other form of words to the same or the like effect." *Id. s.* 39, *and see* 5 & 6 *W.* 4, *c.* 20, *s.* 21.

Be it remembered, that on the —— day of ——, in the year of our Lord ——, at ——, in the county of ——, [or *riding, division, franchise, liberty, city,* &c. as the case may be,] *A. O. is convicted before me J. P., one* [or *us J. P. and J. J. P., two,* as the case may require], *of Her Majesty's justices of the peace for the said county* [or *riding,* &c.], *for that he the said A. O. did on —— kill* [or *take*] *game,* [or *did use a dog,* &c. *for the purpose of killing game,*] *he the said A. O. not being authorized so to do for want of a game certificate, contrary to the statute in such case made and provided,* [or *did,* here specify any other offence, and the time and place when and where the same was committed, as the case may be;] *and I* [or *we*] *do adjudge that the said A. O. shall for the said offence forfeit the sum of ——,* [or *we do adjudge that the said A. O. shall for the said offence forfeit the sum of ——, being after the rate of —— for every head of game so,* &c., or *for every egg so,* &c.] *and shall forthwith pay the said sum, together with the sum of —— for costs; and that in default of immediate payment of the said sums, he the said A. O. shall be imprisoned* [or *imprisoned and kept to hard labour*] *in the —— of ——, for the space of ——, unless the said sums shall be sooner paid;* or *and I* [or *we*] *order that the said sums shall be paid by the said A. O. on or before the —— day of ——, and in default of payment on or before that day, I* [or *we*] *adjudge*

the said A. O. to be imprisoned [or *imprisoned and kept to hard labour*] *in the —— of ——, for the space of ——, unless the said sums shall be sooner paid; and I* [or *we*] *direct that one moiety of the said sum of ——*, (i. e. the penalty) *shall be paid to J. S., who hath informed and prosecuted in this behalf, and that the other moiety thereof shall be paid to L. T. being one of the overseers of the poor of*, &c., *to be by him applied according to the direction of the statute in such case made and provided; and I* [or *we*] *order that the said sum of —— for costs shall be paid to the said J. S., (the complainant). Given under my hand* [or *our hands*] *the day and year first mentioned.*

J. P.

[or *J. P., and J. J. P.*]

This distribution of the penalty is given by stat. 5 & 6 W. 4, c. 20, s. 21. *Vide infra.* The whole of the penalty was originally given to the overseers, to be by them paid over to the county rate. And in a case, since the stat. 5 & 6 W. 4, c. 20, where the justices followed the old form of conviction given by the Game Act, ordering the whole penalty to be paid to the overseers, and committed the defendant for non-payment: it was holden that the conviction was bad, and the justices liable in an action for false imprisonment. *Griffith* v. *Harries et al.*, 2 *Mees. & W.* 335.

Justices shall transmit every conviction to the next court of general or quarter sessions of the peace for the county, &c., there to be kept by the proper officer among the records of the court. 1 & 2 *W.* 4, *c.* 32, *s.* 43.

In default of payment, commitment.] The justice or justices by whom any person shall be summarily convicted and adjudged to pay any sum of money for any offence against this Act, may adjudge that such person shall pay the same either immediately or within such period as the said justice or justices shall think fit; and that in default of payment at the time appointed, such person shall be imprisoned in the common gaol or house of correction, (with or without hard labour, as to the justice or justices shall seem meet,) for any term not exceeding two calendar months where the amount to be paid, (exclusive of costs,) shall not amount to five pounds, and for any term not exceeding three calendar months in any other case, the imprisonment to cease in each of the cases aforesaid, upon payment of the amount and costs. *Id. s.* 38.

Application of penalties.] One moiety of the penalties inflicted by the above statute, 1 & 2 W. 4, c. 32, shall go and be paid to the person who shall inform and prosecute for the same, and the other moiety thereof shall go and be paid to the overseer of the poor or some officer of the parish,

township, or place in which the offence shall have been committed, to be by him paid over to the general rate of the county, &c. 5 & 6 *W.* 4, *c.* 20, *s.* 21.

Appeal, &c.] "Any person who shall think himself aggrieved by any summary conviction in pursuance of this Act, may appeal to the justices at the next general or quarter sessions of the peace, to be holden, not less than twelve days, after such conviction, for the county, riding, division, liberty, franchise, city, or town wherein the cause of complaint shall have arisen, provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or within such three days enter into a recognizance, with a sufficient surety, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall be by the court awarded; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person if in custody; and the court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the court shall seem meet, and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be dealt with and punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment." 1 & 2 *W.* 4, *c.* 32, *s.* 44. The appellant will have no right to take an objection, even for a defect appearing on the face of the conviction, unless it be stated as one of the grounds of appeal in his notice. *R.* v. *Boultbee*, 4 *Ad.* & *El.* 498.

No summary conviction in pursuance of this Act, or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* or otherwise; (*see R.* v. *Boultbee*, 4 *Ad.* & *El.* 498;) and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same. *Id. s.* 45.

Actions against justices, &c.] All actions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and

notice in writing of such action, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into court after such action brought by or on behalf of the defendant. *Id.* *s.* 47.

GAMING.

By stat. 33 H. 8, c. 9, s. 17, all previous statutes "made for the restraint of unlawful games,—as touching the penalties or forfeitures for the same," were declared to be from thenceforth utterly void. And no games were unlawful at common law, nor was gaming in any manner punishable, if unaccompanied by cheating or other fraud.

Playing at dice, cards, &c. by artificers, servants, &c.] By stat. 33 H. 8, c. 9, s. 16, no manner of artificer or craftsman of any handicraft or occupation, husbandman, apprentice, labourer, servant at husbandry, journeyman or servant of artificer, mariners, fishermen, watermen, or any serving man, shall play at "the tables, tennis, dice, cards, bowls, clash, coyting, or any other unlawful game, out of Christmas, under the pain of 20*s.*, to be forfeit for every time; and in Christmas to play at any of the said games in their masters' houses, or in their masters' presence; and also that no manner of person shall at any time play at any bowl or bowls in open places, out of his garden or orchard, upon the pain, for every time so offending, to forfeit 6*s.* 8*d.*; and that all justices of peace, mayors, bailiffs, sheriffs, and all other head officers, and every of them, finding or knowing any manner of person or persons using or exercising any unlawful games, contrary to this present statute, shall have full power and authority to commit every such offender to ward, there to remain without bail or mainprize, until such time that they so offending be bounden by obligation to the King's use, in such sums of money as by the discretions of the said justices, mayors, bailiffs, or other head officers shall be thought reasonable, that they or any of them shall not from henceforth use such unlawful games. And by stat. 2 G. 2, c. 28, s. 9, reciting that this section only enabled the justices to take the party's own recognizance, it is enacted that where

it shall be proved upon the oath of two or more credible witnesses, before any justice or justices of the peace, as well as where such justice or justices shall find upon his or their own view, that any person or persons hath or have used or exercised any unlawful game contrary to the said statute, the said justice or justices shall have full power and authority to commit all and every such offender and offenders to prison, without bail or mainprize, unless and until such offender and offenders shall enter into one or more recognizance or recognizances, with sureties or without, at the discretion of the said justice or justices of the peace, that he or they respectively shall not from thenceforth play at or use such unlawful games.

But, by stat. 8 & 9 Vict. c. 109, s. 1, so much of the above Act, whereby any game of mere skill, such as bowling, coyting, cloyshcayls, half bowl, tennis, or the like, is declared an unlawful game, or which enacts any penalty for playing at any such game of skill,—is repealed.

The mode of prosecuting for these penalties is directed by stat. 31 El. c. 5, s. 7, which enacts that they shall be sued and prosecuted in the general quarter sessions of the peace where the offence shall be committed, or in the leet within which it shall happen. Where justices convicted a man for playing at bowls, as a rogue and vagabond, under the Vagrant Act,—the court quashed the conviction, saying that it was not an offence within that Act, but within this statute of Henry 8th. *R.* v. *Clarke, Cowper*, 35.

Cheating at cards, dice, &c.] By stat. 8 & 9 Vict. c. 109, s. 17, "every person, who shall, by any fraud or unlawful device, or ill practice, in playing at or with cards, dice, tables, or other game, or in bearing a part in the stakes, wagers, or adventures, or in betting on the sides or hands of them that do play, or in wagering on the event of any game, sport, pastime, or exercise, win from any other person to himself, or any other or others, any sum of money or valuable thing, shall be deemed guilty of obtaining such money or valuable thing from such other person by a false pretence, with intent to cheat or defraud such person of the same, and, being convicted thereof, shall be punished accordingly."

The commitment in this case must be for obtaining the money by false pretences. *See ante*, p. 457.

Gaming in the streets, &c.] Every person playing or betting, at any game or pretended game of chance, at or with any table or instrument of gaming, in the street or highway, &c., shall be deemed a rogue and vagabond. 5 *G.* 4, *c.* 83, *s.* 4. *See tit.* "*Vagrant.*"

GAMING-HOUSE.

Keeper, punishable by indictment.] A common gaming-house is a public nuisance; and the party keeping it is punishable, as for a misdemeanor at common law, with fine or imprisonment [with hard labour, 3 *G.* 4, *c.* 114], or both. 1 *Hawk. c.* 25, *s.* 6. *R.* v. *Rogier*, 1 *B.* & *C.* 272. The constable or overseers of the poor of the parish in which the house is situate, may be compelled to prosecute, in the manner mentioned *ante*, pp. 423, 424, with respect to disorderly houses.

Commitment:—*On —— at ——, unlawfully did keep and maintain a certain common gaming-house; and in the said common gaming-house, for lucre and gain, unlawfully and wilfully did cause and procure divers idle and evil-disposed persons to frequent and come to play together at a certain unlawful game of* [*cards*] *called ——, and then and there in the said common gaming-house unlawfully and wilfully did permit and suffer the said idle and evil-disposed persons to be and remain, playing and gaming at the said unlawful game called ——, for divers large and excessive sums of money. And you the said keeper*, &c.

Keeper, &c. punishable upon summary conviction.] By stat. 8 & 9 Vict. c. 109, s. 4, "the owner or keeper of any common gaming-house, and every person having the care or management thereof, and also every banker, croupier, or other person who shall act in any manner in conducting the business of any common gaming-house,—shall, on conviction thereof, by his own confession, or by the oath of one or more credible witnesses, before any two justices of the peace, beside any penalty or punishment to which he may be liable under the provisions of the said Act of King Henry the Eighth, be liable to forfeit and pay such penalty, not more than one hundred pounds, as shall be adjudged by the justices before whom he shall be convicted, or, in the discretion of the justices before whom he shall be convicted, may be committed to the house of correction, with or without hard labour, for any time not more than six calendar months; and on non-payment of any penalty so adjudged, and of the reasonable costs and charges attending the conviction, the same shall be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of one of the convicting justices: provided always, that nothing herein contained shall prevent any proceeding by indictment against the owner or keeper or other person having the care or management of a common gaming-house; but no person who shall have been summarily convicted of any such offence, shall be liable to be proceeded against by indictment for the same offence."

Evidence.] Whereas doubts have arisen whether certain houses, alleged or reputed to be opened for the use of the subscribers only, or not open to all persons desirous of using the same, are to be deemed common gaming-houses; be it declared and enacted, that, in default of other evidence proving any house or place to be a common gaming-house, it shall be sufficient, in support of the allegation in any indictment or information that any house or place is a common gaming-house, to prove that such house or place is kept or used for playing therein at any unlawful game, and that a bank is kept there by one or more of the players exclusively of the others, or that the chances of any game played therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet; and every such house or place shall be deemed a common gaming-house, such as is contrary to law and forbidden by stat. 33 H. 8, c. 9, and by all other Acts containing any provision against unlawful games or gaming-houses. *Id. s.* 2.

But it shall not be necessary, in support of any information for gaming in, or suffering any games or gaming in, or for keeping or using, or being concerned in the management or conduct of, a common gaming-house, to prove that any person found playing at any game was playing for any money, wager or stake. *Id. s.* 5.

And for the more effectual prosecution of the keepers of common gaming-houses, be it enacted, that every person who shall have been concerned in any unlawful gaming, and who shall be examined as a witness by or before any police magistrate or justice of the peace, or on the trial of any indictment or information against the owner or keeper or other person having the care or management of any common gaming-house, touching such unlawful gaming, and who upon such examination shall make true and faithful discovery to the best of his or her knowledge of all things as to which he or she shall be so examined, and shall thereupon receive from the magistrate or justice of the peace or judge of the court by or before whom he or she shall be so examined a certificate in writing to that effect, shall be freed from all criminal prosecutions, and from all forfeitures, punishments, and disabilities, to which he or she may have become liable for any thing done before that time in respect of such unlawful gaming. *Id. s.* 9.

Warrant to enter gaming-houses.] By stat. 33 H. 8, c. 9, s. 14, it shall be lawful to all and every the justices of peace in every shire, mayors, sheriffs, bailiffs and other head officers, within every city, town, and borough, within this realm, from time to time, as well within liberties as without, as need and case shall require, to come, enter and resort into all and every

houses, places, and alleys where such games shall be suspected to be holden, exercised, used or occupied contrary to the form of this statute; and as well the keepers of the same, as also the persons there haunting, resorting and playing, to take, arrest and imprison, and them so taken and arrested to keep in prison unto such time as the keepers and maintainers of the said plays and games have found sureties to the king's use, to be bound by recognizance or otherwise, no longer to use, keep, or occupy any such house, play, game, alley or place; and also that the persons there so found be in like case bound by themselves or else with sureties, by the discretions of the justices, mayor, sheriffs, bailiffs or other head officers no more to play, haunt or exercise from thenceforth in, at or to any of the said places, or at any of the said games.

And by stat. 8 & 9 Vict. c. 109, s. 3, "in every case (except within the metropolitan police district) in which the justices of peace in every shire, and mayors, sheriffs, bailiffs, and other head officers within every city, town, and borough, within this realm, now have by law authority to enter into any house, room, or place where unlawful games shall be suspected to be holden, it shall be lawful for any justice of the peace, upon complaint made before him on oath that there is reason to suspect any house, room, or place to be kept or used as a common gaming-house, to give authority, by special warrant under his hand, when in his discretion he shall think fit, to any constable, to enter, with such assistance as may be found necessary, into such house, room, or place, in like manner as might have been done by such justices, mayors, sheriffs, bailiffs, or other head officers, and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and to arrest, search, and bring before a justice of peace all such persons found therein as might have been arrested therein by such justice of peace had he been personally present; and all such persons shall be dealt with according to law, as if they had been arrested in such house, room, or place by the justice before whom they shall be so brought; and any such warrant may be in the form given in the first schedule annexed to this Act."

Warrant.

County of } *To the Constable, &c.*

Whereas it appears to me, J. P., one of the justices of our Lady the Queen, assigned to keep the peace in the said county, by the information on oath of A. B. of ——, *in the county of* ——, *yeoman, that the house* [*room* or *place*] *known as* [here insert a description of the house, room, or place by which it may be readily made known and found], *is kept and used as a common gaming-house within the meaning of an Act*

passed in the —— year of the reign of Her Majesty Queen Victoria, intituled [here insert the title of this Act]*:

This is, therefore, in the name of our Lady the Queen, to require you, with such assistants as you may find necessary, to enter into the said house [*room* or *place*], *and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and there diligently to search for all instruments of unlawful gaming which may be therein, and to arrest, search, and bring before me, or some other of the justices of our Lady the Queen assigned to keep the peace within the county of ——, as well the keepers of the same as also the persons there haunting, resorting, and playing, to be dealt with according to law; and for so doing this shall be your warrant.*

J. P. (L. S.)

Given under my hand and seal at ——, in the county of ——, this —— day of ——, in the —— year of the reign of ——.

The like, in the metropolitan district.] By stat. 8 & 9 Vict. c. 109, s. 6, "if any superintendent belonging to the metropolitan police force shall report in writing to the commissioners of police of the metropolis that there are good grounds for believing, and that he does believe, that any house, room, or place within the metropolitan police district is kept or used as a common gaming-house, it shall be lawful for either of the said commissioners, by order in writing, to authorize the superintendent to enter any such house, room, or place, with such constables as shall be directed by the commissioner to accompany him, and, if necessary, to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into custody all persons who shall be found therein, and to seize all tables and instruments of gaming found in such house or premises, and also to seize all monies and securities for money found therein."

"And it shall be lawful for the police superintendent making such entry as aforesaid in obedience to any such order of one of the commissioners of police of the metropolis, with the assistance of any constable or constables accompanying him, to search all parts of the house, room, or place which he shall have so entered where he shall suspect that tables or instruments of gaming are concealed, and all persons whom he shall find therein, and to seize all tables and instruments of gaming which he shall so find." *Id. s.* 7.

And where any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game shall be found in any house, room, or place suspected to be used as a common gaming-house, and entered under a warrant

* "An Act to amend the Law concerning Games and Wagers."

or order issued under the provisions of this Act, or about the person of any of those who shall be found therein, it shall be evidence, until the contrary be made to appear, that such house, room, or place is used as a common gaming-house, and that the persons found in the room or place where such tables or instruments of gaming shall have been found were playing therein, although no play was actually going on in the presence of the superintendent or constable entering the same, under a warrant or order issued under the provisions of this Act, or in the presence of those persons by whom he shall be accompanied as aforesaid; and it shall be lawful for the police magistrate or justices before whom any person shall be taken by virtue of the warrant or order, to direct all such tables and instruments of gaming to be forthwith destroyed. *Id. s.* 8.

Licence to keep public billiard table, &c.] By stat. 8 & 9 Vict. c. 109, s. 10, "the justices in every division, district, and place in England, for which a special session of the justices of the peace (called the general annual licensing meeting) is holden annually for granting licences to persons keeping or being about to keep inns, alehouses, and victualling-houses to sell exciseable liquors by retail, to be drunk or consumed on the premises therein specified,—shall have authority, at such general annual licensing meeting, or at any adjournment thereof, to grant billiard licences to such persons as the said justices shall in their discretion deem fit and proper to keep public billiard tables and bagatelle boards, or instruments used in any game of the like kind, and, at the special sessions holden for transferring licences to keep inns, shall have authority to transfer such billiard licences to such other persons as they in their discretion shall deem fit and proper to continue to hold the same, and who in each case shall be required to give the like notice of their intention to apply for such billiard licence, and entitled to receive the like notice of the licensing days, as is required in the case of persons intending to apply for a licence or the transfer of a licence to sell exciseable liquors by retail to be drunk or consumed on the premises, or as near thereto as the case will allow; (*see ante*, pp. 24, 20;) and every such billiard licence shall be in the form given in the third schedule annexed to this Act, and shall continue in force in the counties of Middlesex and Surrey from the fifth day of April, and elsewhere from the tenth day of October, after the granting thereof, for one whole year thence respectively next ensuing, and no longer; and the clerk of the justices shall be entitled to demand and receive from every person licensed under this Act, for the petty constable or other peace officer, for serving notices and other services required of him, the sum of one shilling, and for the clerk of the justices, for the licence, the sum of five shillings; and every clerk who shall demand or receive from any person for such fees more than the said

passed in the —— year of the reign of Her Majesty Queen Victoria, intituled [here insert the title of this Act]*:

This is, therefore, in the name of our Lady the Queen, to require you, with such assistants as you may find necessary, to enter into the said house [*room* or *place*], *and, if necessary, to use force for making such entry, whether by breaking open doors or otherwise, and there diligently to search for all instruments of unlawful gaming which may be therein, and to arrest, search, and bring before me, or some other of the justices of our Lady the Queen assigned to keep the peace within the county of ——, as well the keepers of the same as also the persons there haunting, resorting, and playing, to be dealt with according to law; and for so doing this shall be your warrant.*

J. P. (L. S.)

Given under my hand and seal at ——, in the county of ——, this —— day of ——, in the —— year of the reign of ——.

The like, in the metropolitan district.] By stat. 8 & 9 Vict. c. 109, s. 6, "if any superintendent belonging to the metropolitan police force shall report in writing to the commissioners of police of the metropolis that there are good grounds for believing, and that he does believe, that any house, room, or place within the metropolitan police district is kept or used as a common gaming-house, it shall be lawful for either of the said commissioners, by order in writing, to authorize the superintendent to enter any such house, room, or place, with such constables as shall be directed by the commissioner to accompany him, and, if necessary, to use force for the purpose of effecting such entry, whether by breaking open doors or otherwise, and to take into custody all persons who shall be found therein, and to seize all tables and instruments of gaming found in such house or premises, and also to seize all monies and securities for money found therein."

"And it shall be lawful for the police superintendent making such entry as aforesaid in obedience to any such order of one of the commissioners of police of the metropolis, with the assistance of any constable or constables accompanying him, to search all parts of the house, room, or place which he shall have so entered where he shall suspect that tables or instruments of gaming are concealed, and all persons whom he shall find therein, and to seize all tables and instruments of gaming which he shall so find." *Id. s.* 7.

And where any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game shall be found in any house, room, or place suspected to be used as a common gaming-house, and entered under a warrant

* "An Act to amend the Law concerning Games and Wagers."

or order issued under the provisions of this Act, or about the person of any of those who shall be found therein, it shall be evidence, until the contrary be made to appear, that such house, room, or place is used as a common gaming-house, and that the persons found in the room or place where such tables or instruments of gaming shall have been found were playing therein, although no play was actually going on in the presence of the superintendent or constable entering the same, under a warrant or order issued under the provisions of this Act, or in the presence of those persons by whom he shall be accompanied as aforesaid; and it shall be lawful for the police magistrate or justices before whom any person shall be taken by virtue of the warrant or order, to direct all such tables and instruments of gaming to be forthwith destroyed. *Id. s.* 8.

Licence to keep public billiard table, &c.] By stat. 8 & 9 Vict. c. 109, s. 10, "the justices in every division, district, and place in England, for which a special session of the justices of the peace (called the general annual licensing meeting) is holden annually for granting licences to persons keeping or being about to keep inns, alehouses, and victualling-houses to sell exciseable liquors by retail, to be drunk or consumed on the premises therein specified,—shall have authority, at such general annual licensing meeting, or at any adjournment thereof, to grant billiard licences to such persons as the said justices shall in their discretion deem fit and proper to keep public billiard tables and bagatelle boards, or instruments used in any game of the like kind, and, at the special sessions holden for transferring licences to keep inns, shall have authority to transfer such billiard licences to such other persons as they in their discretion shall deem fit and proper to continue to hold the same, and who in each case shall be required to give the like notice of their intention to apply for such billiard licence, and entitled to receive the like notice of the licensing days, as is required in the case of persons intending to apply for a licence or the transfer of a licence to sell exciseable liquors by retail to be drunk or consumed on the premises, or as near thereto as the case will allow; (*see ante*, pp. 24, 20;) and every such billiard licence shall be in the form given in the third schedule annexed to this Act, and shall continue in force in the counties of Middlesex and Surrey from the fifth day of April, and elsewhere from the tenth day of October, after the granting thereof, for one whole year thence respectively next ensuing, and no longer; and the clerk of the justices shall be entitled to demand and receive from every person licensed under this Act, for the petty constable or other peace officer, for serving notices and other services required of him, the sum of one shilling, and for the clerk of the justices, for the licence, the sum of five shillings; and every clerk who shall demand or receive from any person for such fees more than the said

sums, being together six shillings, shall for every such offence, on conviction before one justice, forfeit and pay the sum of five pounds."

Form of the Billiard Licence.

At the general licensing annual meeting [or *an adjournment of the general annual licensing meeting*, or *at a special petty session*] *of Her Majesty's justices of the peace acting for the division* [or *liberty*, &c., as the case may be], *of* —— *in the county of* ——, *holden at* ——, *on the* —— *day of* ——, *in the year* —— *for the purpose of granting billiard licences, we being* —— *of Her Majesty's justices of the peace acting for the said county* [or *liberty*, &c., as the case may be,] *and being the majority of those assembled at the said session, do hereby authorize and empower A. L. now dwelling at* ——, *in the parish of* ——, *to keep a house for public billiard playing at* [here specify the house,] *provided that he* [or *she*] *put and keep up the words "licensed for billiards" legibly printed in some conspicuous place near the door and on the outside of the said house, and do not wilfully or knowingly permit drunkenness or other disorderly conduct in the said house, and do not knowingly allow the consumption of exciseable liquors therein by the persons resorting thereto, and do not knowingly suffer any unlawful games therein, and do not knowingly suffer persons of notoriously bad character to assemble and meet together therein, and do not open the said house for play or allow any play therein after one and before eight of the clock in the morning, or keep it open or allow any play therein on Sundays, Christmas-day, or Good Friday, or on any day appointed for a public fast or thanksgiving, but do maintain good order and rule therein: And this licence shall continue in force from the* —— *day of* —— *next, until the* —— *day of* —— *then next following, and no longer.*

Given under our hands and seals on the day and at the place first written.

Keeping billiard table, &c. without licence.] And after the fifth day of April in the year one thousand eight hundred and forty-six, in the counties of Middlesex and Surrey, and elsewhere after the tenth day of October next after the passing of this Act, every house, room, or place kept for public billiard playing, or where a public billiard table or bagatelle board, or instrument used in any game of the like kind, is kept, at which persons are admitted to play, (except in houses or premises specified in any licence granted under stat. 9 G. 4, c. 61, hereinafter called a victualler's licence,) shall be licensed under this Act; and after the said fifth day of April in Middlesex and Surrey, and elsewhere after the said tenth day of October, every person keeping any such public billiard table or bagatelle

board, or instrument used in any game of the like kind for public use, without being duly licensed so to do, and not holding a victualler's licence for the house or premises where such billiard table, bagatelle board, or other instrument as aforesaid is kept or used,—and also every person licensed under this Act, who shall not during the continuance of such billiard licence put and keep up the words "licensed for billiards," legibly printed in some conspicuous place near the door and on the outside of the house specified in the licence,—shall be liable to be proceeded against as the keeper of a common gaming-house, and, beside any penalty or punishment to which he may be liable if convicted of keeping a common gaming-house, shall, on conviction of keeping such unlicensed billiard table, bagatelle board, or other instrument as aforesaid, by his own confession, or by the oath of one or more credible witnesses, before any police magistrate or any two justices of the peace, be liable to pay such penalty, not more than ten pounds for every day on which such billiard table, bagatelle board, or instrument as aforesaid shall be used, as shall be adjudged by the magistrate or justices before whom he shall be convicted, or, in the discretion of the magistrate or justices, may be committed to the house of correction with or without hard labour, for any time not more than one calendar month; and on non-payment of any penalty so adjudged, and of the reasonable costs and charges of the conviction, the same shall be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of the magistrate or one of the convicting justices; but no person who shall have been summarily convicted of any such offence, shall be liable to be further proceeded against by indictment for the same offence. *Id. s.* 11.

Offences against the tenor of the licence.] Every person licensed under this Act, who shall be convicted, before a police magistrate or two justices acting in and for the division or place in which shall be situated the house kept or theretofore kept by such person, of any offence against the tenor of the licence to him granted, shall be liable to the same penalties and punishments in the case of a first, second, or third offence respectively to which persons licensed to keep ale-houses under stat. 9 G. 4, c. 61, are respectively liable, on conviction of a first, second, or third offence against the tenor of the licence granted to them under the last-recited Act, or as near thereunto as the nature of the case will allow; and all the provisions of the last-recited Act, with respect to convictions and penalties for offences against the last-recited Act, and the proceedings for enforcing the same, and to the expenses of prosecution and penalties on witnesses for not attending, and the recovery and

application of penalties, and the proceedings on appeals against convictions, and the award of costs on appeals, and in actions against justices, constables, or other persons for any thing done in execution of the last-recited Act, shall be deemed to apply, so far as they are applicable, to convictions for offences against the tenor of the licences granted under this Act, and to the proceedings consequent thereupon or connected therewith, as if they were herein re-enacted. *Id. s.* 12. *See ante*, pp. 32—41.

Not to allow play at certain times,—penalty.] And every person keeping any public billiard table or bagatelle board, or instrument used in any game of the like kind, whether he be the holder of a victualler's licence or licensed under this Act, who shall allow any person to play at such table, board, or instrument after one and before eight of the clock in the morning of any day, or at any time on Sundays, Christmas-day, or Good Friday, or any day appointed to be kept as a public fast or thanksgiving,—and every person holding a victualler's licence who shall allow any person to play at such table, board, or instrument kept on the premises specified in such victualler's licence, at any time when such premises are not by law allowed to be open for the sale of wine, spirits, or beer, or other fermented or distilled liquors, shall be liable to the penalties herein provided in the case of persons keeping such public billiard table, bagatelle board, or instrument as aforesaid for public use without licence;—and during those times when play at such table, board, or instrument is not allowed by this Act, every house licensed under this Act, and every billiard room in every house specified in any victualler's licence, shall be closed, and the keeping of the same open, or allowing any person to play therein or thereat, at any of the times or on any of the days during which such play is not allowed by this Act, shall be deemed in each case an offence against the tenor of the licence of the person so offending. *Id. s.* 13.

Constable to visit licensed houses.] And it shall be lawful for all constables and officers of police to enter into any house, room or place where any public table or board is kept for playing at billiards, bagatelle, or any game of the like kind, when and so often as such constables and officers shall think proper; and every person licensed under the stat. 9 G. 4, c. 61, or this Act, who shall refuse to admit, or who shall not admit, any such constable or officer of police into such house, room, or place, shall, on conviction thereof before a police magistrate or any two justices of the peace, be deemed guilty of an offence against the tenor of his licence, whether the same be a billiard licence or a victualler's licence, and in the case of a first,

second, third, or subsequent offence shall be punished accordingly. *Id. s.* 14.

Conviction, certiorari.] No information, conviction, or other proceeding before or by any justice or justices under this Act shall be quashed or set aside, or adjudged void or insufficient, for want of form, or be removed by certiorari into Her Majesty's court of Queen's Bench. *Id. s.* 25.

Distress warrant.] When any distress shall be made for any money to be levied by virtue of the warrant of any justice under this Act, the distress shall not be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, warrant of apprehension, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser from the beginning on account of any irregularity which shall be afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage by an action on the case in any of Her Majesty's courts of record. *Id. s.* 21.

Appeal.] Any person who shall be summarily convicted under this Act, may appeal to the next general or quarter session of the peace to be holden for the county or place wherein the cause of complaint shall have arisen, provided that such person at the time of the conviction, or within forty-eight hours thereafter, shall enter into a recognizance, with two sufficient securities, conditioned personally to appear at the said session to try such appeal, and to abide the further judgment of the court at such session, and to pay such costs as shall be by the last-mentioned court awarded; and it shall be lawful for the magistrate or justices by whom such conviction shall have been made, to bind over the witnesses who shall have been examined, in sufficient recognizances, to attend and be examined at the hearing of such appeal; and that every such witness, on producing a certificate of being so bound, under the hand of the said magistrate or justices, shall be allowed compensation for his or her time, trouble, and expenses in attending the appeal, which compensation shall be paid in the first instance by the treasurer of the county or place, in like manner as in cases of misdemeanor, under the provisions of stat. 7 G. 4, c. 64, (*see ante*, p. 392, *and post, tit.* "*Trial,*") and in case the appeal shall be dismissed, and the order or conviction affirmed, the reasonable expenses of all such witnesses attending as aforesaid, to be ascertained by the court, shall be repaid to the said treasurer by the appellant. *Id. s.* 20.

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Appeal, p. 587.
Actions, &c., p. 588.

1. *The Gaol and House of Correction.*

For what places.] There shall be maintained, at the expense of every county in England and Wales, one common gaol; and at the expense of every county not divided into ridings or divisions, and of every riding or division of a county (having several and distinct commissions of the peace, or several or distinct rates in the nature of county rates applicable by law to the maintenance of a prison for such division) in England and Wales, at least one house of correction; and one gaol and one house of correction shall be maintained in the several cities, towns, and places mentioned in the schedule marked (A) annexed to this Act,* 4 G. 4, c. 64, s. 2, and in every borough having a separate court of quarter sessions, and which does not contract with the justices of the county for the maintenance of its prisoners in the county gaol. 5 & 6 *Vict. c.* 98, *s.* 15, *and see s.* 18—22. And by stat. 2 & 3 Vict. c. 56, s. 1, so much of the above Act, 4 G. 4, c. 64, and of stat. 5 G. 4, c. 85, (herein-after mentioned) as does not relate to the classification of prisoners of each sex into distinct classes, shall, subject to stat. 5 & 6 W. 4, c. 38, and 6 & 7 W. 4, c. 105, and this Act, extend to every gaol, house of correction, bridewell and penitentiary in England and Wales, now or hereafter to be provided, and not exclusively used for the confinement of debtors, except the Queen's Bench and Fleet prisons, and the general penitentiary at Milbank, 2 & 3 *Vict. c.* 56, *s.* 1.

But in all cases where any person liable by law to be committed to the house of correction, shall be apprehended within any district, city, town, or place mentioned in the schedule to this Act annexed, and the inhabitants of any such district, &c., shall be contributory to the support and maintenance of the house of correction of the county, &c., in which such district, &c., is situate, [or shall pay for the maintenance of their prisoners there, 5 & 6 *Vict. c.* 98, *ss.* 18, 22, *and see ss.* 19,

* Bristol, Chester, Coventry, Exeter, Gloucester, Kingston-upon-Hull, Leicester, Liverpool, Newcastle-upon-Tyne, Norwich, Nottingham, Portsmouth, Worcester, York. *But see* 2 & 3 *Vict. c.* 56, *s.* 1, *and* 5 & 6 *Vict. c.* 98, *s.* 15, *supra.*

20, 21,] the justices of the peace of such district, &c., may commit such person to the house of correction of the county, &c., and in such case it shall not be necessary that any other house of correction shall be built or maintained in or for such district, &c., and the inhabitants of such district, &c., shall not be compelled to the payment of any rate for the building or maintaining of any other house of correction in or for such district, &c. 4 *G.* 4, *c.* 64, *s.* 8.

Provisions are also made for two or more counties or boroughs joining to establish a district prison, by stat. 5 & 6 Vict. c. 53, and 7 & 8 Vict. c. 50.

Every gaol, house of correction, or other prison for any county, riding or division, county of a city or county of a town, or for any town, liberty, soke, or place, not being a county, but having an exclusive jurisdiction for the trial of felonies or misdemeanors committed therein, which is now built or shall hereafter be built, situate within any other county, &c., shall be deemed and taken to be part of the county, &c., for which the same shall be used as a gaol, house of correction, or other prison; and the justices of the peace, coroners, constables, and other officers of such county, &c., for which the same shall be used as a gaol, house of correction, &c., shall have as full power and authority therein, as they would have if the same was not situate within the limits of such other county, &c. 4 *G.* 4, *c.* 64, *s.* 48.

Building, altering and repairing them.] In case it shall appear to the justices at any general or quarter sessions of the peace, by any report made, under the provisions of this Act, of the state of any prison, or by any presentment by the grand jury at the assizes, or sessions of the peace, or by any presentment made by any two or more justices of the peace, that any gaol or house of correction to which this Act shall extend, is insufficient, inconvenient, or in want of repair, or otherwise inadequate to give effect to the rules and regulations prescribed by this Act, or that there is a necessity for the erection of any new gaol or house of correction, the justices at such general or quarter sessions, or at the sessions next after any such report or presentment made, shall cause notice to be given, three times at least, in some public newspaper circulating within the county, &c., of such report or presentment having been laid before such sessions, and of their intention to take the same into consideration at the next ensuing or some subsequent general or quarter sessions, or adjournment thereof; and in case the justices at such last-mentioned sessions, or the major part of them, shall resolve that such report or presentment is well founded, then such justices, at the sessions mentioned in such notice, or at a subsequent sessions, or adjournment thereof, with the like notice, shall take such measures,

either by contract or otherwise, as shall appear to them to be requisite and proper, for the altering, enlarging, or repairing, or for building or rebuilding any such gaol or house of correction, regard being had, in the case of contracts, to the reasonableness of the price and responsibility of the contractors; and every contractor shall give sufficient security for the due performance of his contract to the clerk of the peace or town-clerk for the county, riding, division, district, city, town, or place, to be inspected at all reasonable times by any justices or by any other person contributing to the rate of such county, riding, division, district, city, town, or place, without fee or reward. *Id. s.* 45. For this purpose, justices are empowered to purchase lands, houses, &c. *Id. s.* 46.

And by stat. 2 & 3 Vict. c. 56, s. 11, every prison which is inadequate to give effect to the rules, prescribed by this Act, or to be made and submitted to the secretary of state under the authority of this Act, shall be taken to be within the provisions of the said Act, 4 G. 4, c. 64, concerning prisons which are inadequate to give effect to the rules and regulations prescribed by that Act, and may be reported or presented accordingly.

But it shall not be lawful to enlarge, build, or rebuild any prison, until a plan of such prison or intended prison, and of the intended additions thereunto, drawn upon a scale of not less than one sixteenth of an inch to a foot, shall have been sent to one of Her Majesty's principal secretaries of state, and until the secretary of state shall have subscribed a certificate or declaration approving such plan, except in the case hereinafter provided: provided always, that in every case in which the secretary of state shall disapprove any such plan, he shall state in writing under his hand the grounds of his disapproval; and it shall not be lawful for him to disapprove the plan of any intended prison, in which rules for the separate confinement of prisoners are not in force, on the sole ground that such plan does not allow the separate confinement of prisoners. *Id. s.* 12.

Provided that if three calendar months shall elapse from the time when such plan shall have been received by the secretary of state, without any notification by the secretary of state that such plan is disapproved by him, such plan may be put in execution, although no such certificate or declaration shall have been subscribed as aforesaid. *Id. s.* 13.

And if it shall at any time happen that any such gaol or house of correction shall become unsafe or unfit for the custody of the prisoners confined therein, between the several times of holding the general or quarter sessions, it shall and may be lawful for any two or more justices (one of whom shall be a visiting justice for the prison) to order such repairs and alterations to be immediately done and made, as may be necessary

and sufficient for the safe and proper custody of such prisoners and the upholding of such prison; and such justices shall report the same to the next court of general or quarter sessions to be holden for such county, riding, division, district, city, town, or place; and such court is hereby authorized to order the payment of such sum or sums of money as shall have been properly expended in such repairs or alterations as aforesaid. 4 *G.* 4, *c.* 64, *s.* 47.

In case it shall be expressly presented that the place wherein any old prison is situated is improper, or that a new gaol or house of correction is necessary, the justices in their general or quarter sessions assembled shall take such presentment into their consideration; and if it shall be resolved by the justices assembled at two successive general or quarter sessions, or the major part of them, that such old prison ought to be removed, or that such new prison is necessary, the justices so assembled may contract for the building of a new gaol or house of correction in any part of the county, &c., which they may deem eligible; and make sale of the old site. *Id. s.* 50. *See further upon this subject,* 7 *G.* 4, *c.* 18.

In what cases the justices at sessions may mortgage the county rates, to raise money for the building, repairing or enlarging a gaol or house of correction, see 4 *G.* 4, *c.* 64, *ss.* 54, 55; as to the power of corporations, &c., to convey lands, &c., *ss.* 56, 57; compensation for lands, &c., *ss.* 58—61; application of purchase money, *ss.* 62—66. And see 6 *G.* 4, *c.* 40. 5 & 6 *Vict. c.* 98.

2. *To what Prisons Offenders shall be committed.*

Vagrants.] All idle and disorderly persons, rogues and vagabonds, incorrigible rogues and other vagrants, shall be committed to some house of correction; and such house of correction shall be deemed the only legal place of commitment of any such person. 4 *G.* 4, *c.* 64, *s.* 7.

Other offenders.] This subject has already been sufficiently treated of, under the title "Commitment," *ante,* p. 298, to which the reader is referred.

3. *Classification of Prisoners.*

How.] "The male and female prisoners shall be confined in separate buildings or parts of the prison, so as to prevent them from seeing, conversing, or holding any intercourse with each other; and the prisoners of each sex shall be divided into distinct classes, care being taken that prisoners of the follow-

ing classes do not intermix with each other. *In gaols—First*, debtors and persons confined for contempt of court on civil process; *second*, prisoners convicted of felony; *third*, prisoners convicted of misdemeanors. [But now, by stat. 3 & 4 Vict. c. 25, s. 2, prisoners convicted of misdemeanors, and not sentenced to hard labour, shall be divided into at least two divisions, one of which shall be called the first division; separate rules and regulations shall be made for each division; the rules enacted by stat 2 & 3 Vict. c. 56, (*post*, p. 571,) shall not apply to the said first division; and whenever any person convicted of misdemeanor shall be sentenced to imprisonment without hard labour, the court or judge before whom such person shall have been tried, may order, if they think fit, that such prisoner shall be confined with the prisoners of the said first division; but no prisoner, with respect to whom no such order shall be made, shall be confined with the prisoners of the said first division;] *fourth*, prisoners committed on charge or suspicion of felony; *fifth*, prisoners committed on charge or suspicion of misdemeanors, or for want of sureties: *In houses of correction—first*, prisoners convicted of felony; *second*, prisoners convicted of misdemeanors, [*see* 3 & 4 *Vict. c.* 25, *s.* 2, *supra*;] *third*, prisoners committed on charge or suspicion of felony; *fourth*, prisoners committed on charge or suspicion of misdemeanors; *fifth*, vagrants. Such prisoners as are intended to be examined as witnesses in behalf of the crown in any prosecution, shall also be kept separate in all gaols and houses of correction." 4 *G.* 4, *c.* 64, *s.* 10; *rule* 6.

But nothing herein shall extend to prevent the justices from authorizing, at their discretion, the employment of any prisoner in the performance of any menial office within the prison, or for the purpose of instructing others; [*but see the* 4*th rule of* 2 & 3 *Vict. c.* 56, *post*, p. 572;] and if the keeper shall at any time deem it improper or inexpedient for a prisoner to associate with the other prisoners of the class to which he or she may belong, it shall be lawful for him to confine such prisoner within any other class or description of prisoners, or in any other part of the prison, until he can receive the directions of a visiting justice thereon, to whom he shall apply with as little delay as possible, and who in every such instance shall ascertain whether the reasons assigned by the keeper warrant such deviation from the established rules, and shall give such orders in writing as he shall think fit, under the circumstances of the particular case. *Id.*

But now, by stat. 2 & 3 Vict. c. 56, s. 3, in order to prevent the contamination arising from the association of prisoners in any prison in which rules for the individual separation of prisoners shall be in force, any prisoner may be separately confined during the whole or any part of the period of his or her

imprisonment, under the restrictions hereinafter provided; *s.* 3; and separate confinement under the provisions of this Act shall not be deemed solitary confinement within the meaning of any Act forbidding the continuance of solitary confinement for more than a limited time; provided that no cell shall be used for the separate confinement of any prisoner, which is not of such a size, and lighted, warmed, ventilated, and fitted up in such manner as may be required by a due regard to health, and furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison; and that no cell shall be used for such separate confinement, until its fitness in these several particulars shall have been certified by one of the inspectors of prisons to one of Her Majesty's principal secretaries of state; and that every prisoner so separately confined shall have the means of taking air and exercise at such times as shall be deemed necessary by the surgeon, and shall be furnished with the means of moral and religious instruction, and with suitable books, to be chosen as hereinafter provided, and also with labour or employment, unless it shall be deemed advisable by the secretary of state to make and certify a regulation for withholding, for a period or periods not exceeding one calendar month at any one time, such labour or employment: provided also, that if it shall at any time be made to appear to the secretary of state, that the conditions upon which such rules for the separate confinement of prisoners were allowed have not been fulfilled, or that upon further inquiry it shall appear that the provisions required are insufficient, it shall be lawful for the secretary of state to annul the rules so made and allowed as aforesaid, and thenceforward the rules so annulled shall cease to be of force in that prison, and thereafter it shall not be lawful to continue any prisoner in separate confinement in that prison until new provisions shall have been made and allowed as aforesaid for the separate confinement of prisoners therein: provided also, that in case the prison shall be inadequate for the individual separation of all the prisoners who may be confined therein at one time, the rules of the prison shall specify the class or description of prisoners who shall be confined in the separate cells, having regard either to the nature of the crime with which the prisoner may be charged, or of which he or she may have been convicted, or to the sex or age of the prisoner, or to the term of imprisonment, or to such other circumstances as the persons authorized to make such rules shall think fit, and as the secretary of state shall approve. *Id. s.* 4.

In "altering, enlarging, repairing, or building any gaol or house of correction, the justices shall adopt such plans as shall afford the most effectual means for the security, classification, health, inspection, employment, and religious and moral instruction of the prisoners; the building shall be so

constructed or applied, and the keepers and officers' apartments so situated, as may best insure the safety of the prison, and facilitate the control and superintendence of those committed thereto; distinct wards and dry and airy cells shall be provided, in which prisoners of the several descriptions and classes hereinafter enumerated may be respectively confined; and it shall be considered as a primary and invariable rule, that the male prisoners shall in all cases be separated from the female, so as to prevent any communication between them: provision shall be made for the separation of prisoners into the following classes; if a *gaol*—1st, debtors, and persons confined for contempt of court on civil process; 2dly, prisoners convicted of felony; 3dly, those convicted upon trial of misdemeanors; 4thly, those committed on charge or suspicion of felony; 5th, those committed on charge of misdemeanors, or for want of sureties:—if a *house of correction;* 1st, prisoners convicted of felony; 2nd, prisoners convicted upon trial of misdemeanors; 3rd, those committed on charge or suspicion of felony; 4th, those committed on charge of misdemeanors; 5th, vagrants. Places of confinement shall also be set apart in every gaol and house of correction, for such prisoners as are intended to be examined as witnesses in behalf of the crown in any prosecutions, and such further means of classification shall be adopted as the justices shall deem conducive to good order and discipline; separate rooms shall be provided, as infirmaries or sick wards for the two sexes, and, as far as is practicable, for the different description of prisoners, and warm and cold baths, or bathing tubs, shall be introduced into such parts of the prison as may be best adapted for the use of the several classes; proper yards shall be allotted to the different classes for air and exercise, and each class shall have the use of a privy, and be furnished with a supply of good water; a separate sleeping cell, shall, if possible, be provided for every prisoner; but as the numbers may sometimes be greater than the prison is calculated to contain under the arrangement required by this Act, and as it is expedient that two male prisoners only should never be lodged together, a small proportion of cells or rooms shall be provided for the reception of three or more persons; every prison shall contain rooms and places properly fitted up for the exercise of labour and industry, and also a competent number of cells adapted to solitary confinement, for the punishment of refractory prisoners, and for the reception of such persons as may by law be confined therein; a chapel shall be provided in every prison, in such a convenient situation as to be easy of access to all the prisoners; it shall be fitted up with separate divisions for males and females, and also for the different classes; it shall be strictly set apart for religious worship, or for the occasional religious and moral instruction of the prisoners, and shall never be appropriated to or employed for any

other purpose whatsoever; in cases where the justices shall deem it necessary that the chaplain should reside, either occasionally or permanently, within the prison, or near to it, proper apartments shall be provided therein, or in the neighbourhood thereof, for his accommodation," 4 *G.* 4, *c.* 64, *s.* 49.

But by stat. 5 G. 4, c. 85, s. 10, reciting that in many counties, by reason of the small number of prisoners, it is not necessary to provide the whole number of wards and airing grounds required by stat. 4 G. 4, c. 64, it is enacted that in every prison to which stat. 4 G. 4, c. 64, extends, except those of Canterbury, Litchfield, and Lincoln, provision shall be made for the following classification at the least:—

"In all such *gaols*, the male and female prisoners shall be confined in separate wards or parts of the gaol. The male prisoners shall be divided into five classes:—1st, debtors and persons committed for contempt of court on civil process; 2nd and 3rd, prisoners convicted, who may be put into either of these classes, as to the visiting magistrate may seem meet, reference being had to the character and conduct of the prisoners, and the nature of their offence; 4th and 5th, prisoners committed for trial, who may also be put into either of these two classes, as to the visiting magistrates may seem meet, reference being had in like manner to the character and conduct of the prisoners, and the nature of their offence.

"The female prisoners shall be divided at least into three classes:—1st, debtors, and persons committed for contempt of court on civil process; 2nd, persons convicted; 3rd, prisoners committed for trial.

"In all such *houses of correction*, the male and female prisoners shall also be confined in separate wards or parts of the house. The male prisoners shall be divided into five classes;—1st and 2nd, prisoners convicted, who may be put into either of such classes, as to the visiting magistrates may seem meet, regard being had to the character and conduct of the prisoners, and the nature of their offence; 3rd and 4th, prisoners committed for trial, in all houses of correction where such prisoners are received; such prisoners may be put in either of these classes, as to the visiting magistrates may seem meet, regard being had, as already mentioned, to the character and conduct of the prisoner, and the nature of his offence; 5th, vagrants.

"In places where the *gaol and house of correction are united*, the male prisoners shall be divided into six classes at least:—1st, debtors, and prisoners committed for contempt of court on civil process; 2nd and 3rd, convicted prisoners; 4th and 5th, those committed for trial: such prisoners to be assigned to either of those classes of prisoners convicted or committed respectively, as to the visiting magistrates shall seem meet, regard being had to the character and conduct of the prisoners, and the nature of their offence; 6th, vagrants.

"The female prisoners in each of such houses of correction shall be divided into three classes:—1st and 2nd, prisoners convicted, the prisoners to be put into either of such classes as to the visiting magistrate shall seem meet, regard being had to their character and conduct, and the nature of their offence; vagrants shall be assigned to one or other of these classes, as the visiting magistrates in their discretion may see meet; 3rd, where females are committed to any house of correction before trial, they shall be kept in a class by themselves."

By 5 G. 4, c. 85, s. 12, prisoners confined for penalties under the revenue laws, may be assigned to such class of convicted prisoners as the visiting magistrates in their discretion shall think fit, regard being had to the character of the prisoner, and his or her conduct while in prison; and the reasons for assigning such prisoner to any particular class of convicts, shall be reported by the visiting magistrates to the quarter sessions.

By sect. 13, where there shall be but one prisoner of any class, such prisoner may be assigned, with his or her consent, to any other class of prisoners of the same sex, which the visiting magistrates in their discretion shall think fit.

As to prisons in Wales, see sect. 11.

And lastly, by stat. 2 & 3 Vict. c. 56, s. 5, the prisoners of each sex in every gaol, house of correction, bridewell, and penitentiary in England and Wales, which before the passing of this Act was not within the provisions of stat. 4 G. 4, c. 64, as amended by stat. 5 G. 4, c. 85, and in which a more minute classification or individual separation shall not be in force, shall be at least divided into the following classes; (that is to say,)—1st, debtors, in those prisons in which debtors may be lawfully confined; [but this is now repealed by stat. 3 & 4 Vict. c. 25, s. 1; and it is enacted, that in every prison in which debtors may lawfully be confined, the persons authorized by law to make rules and regulations for the government of such prison shall, with the approval of one of the principal secretaries of state, make such rules, orders, and regulations for the good management of the debtors confined therein, as shall by them from time to time be regarded as fit and necessary. *Id. s.* 2.] 2nd, prisoners committed for trial; 3rd, prisoners convicted and sentenced to hard labour; 4th, prisoners convicted, and not sentenced to hard labour: [prisoners convicted of misdemeanors, and not sentenced to hard labour, shall be divided at least into two divisions. 3 & 4 *Vict. c.* 25, *s.* 2, *ante*, p. 561.] 5th, prisoners not included in the foregoing classes.—And in every prison in *England* and *Wales*, separate rules and regulations shall be made for every class of prisoners in that prison. 2 & 3 *Vict. c.* 56, *s.* 5.

How where there are two or more houses of correction.] If the

now existing house or houses of correction in any county, &c. be not sufficient or capable of being made sufficient for the extended classification required by this Act, the justices at their general or quarter sessions may, if they shall so think fit, order and direct that, in addition to the house of correction hereinbefore directed to be maintained, one or more of such houses of correction so existing as aforesaid, shall be continued and maintained for the reception of one or more particular classes or descriptions of prisoners as may be prescribed by the said justices. 4 *G.* 4, *c.* 64, *s.* 3.

And at any general or quarter sessions to be held from time to time, the justices of the peace there assembled shall proceed in carrying this Act into effect; and such justices shall, by orders to be made for that purpose, ascertain and declare to what classes of prisoners every such gaol, house of correction, or any part thereof, shall be applicable; and every such order shall be signed by the chairman of such sessions, and shall be notified by the clerks of the peace to the several justices of the peace in every such county, &c.; and notice thereof shall be inserted in three of the newspapers usually circulated in such county, &c., within three weeks after any such order made, and a copy thereof shall be served upon the keeper of every gaol or house of correction within such county, &c., and after the making of such order, and service of a copy thereof upon such keeper as aforesaid, such class or classes of prisoners as shall be specified in such order, and no other, shall be committed to, or detained in any such gaol, house of correction, or any part thereof; and all persons not coming within the class or description of prisoners, who may lawfully be committed to or detained in such prison as shall be appointed by the justices for the confinement of one or more class or classes of prisoners, may be removed to the gaol or house of correction of the county, riding, or division. *Id. s.* 4.

How, where the gaol and house of correction are together.] Where in any county, &c., any house of correction shall be part of the same building, or inclosed in the same boundary wall as, or shall be contiguous to, the common gaol, and shall be under the same keeper and the same visiting justices, the justices of the peace at any general or quarter sessions may from time to time, with the consent of the sheriff of the county, signified in writing under his hand, proceed to carry into effect the classification and separation directed by this Act in the whole of such buildings, instead of each, and to divide the whole of such buildings into such number of compartments for the purpose of such separation and classification, as would be required under the regulations of this Act if the same had been one distinct gaol or house of correction; and may also, at any general or quarter sessions from time to time, by their order, and with

such consent, ascertain and declare what part of the said buildings shall be considered as a gaol, and what as the house of correction, and shall be appropriated to the confinement of particular classes and descriptions of prisoners; and may direct what classes and descriptions shall be confined in each division of such buildings: provided that prisoners for debt may be removed to, and shall always be confined in, the part of such buildings, which shall be so appropriated for the gaol of the county, &c. *Id. s.* 5.

Provided that all persons committed to, or detained in the part of such buildings which shall be so declared to be the gaol, shall from henceforth be deemed to be in the legal custody of the sheriff, and of the gaoler appointed by the sheriff; but the sheriff shall not be answerable for the safe custody of any person who, in pursuance of any such order, shall be removed to, committed to, or detained in any part of such buildings, other than the part so declared to be the gaol. *Id. s.* 6.

When the gaol and house of correction are thus united, the chapel, and the sick wards or infirmary, shall be common to both. 5 *G.* 4, *c.* 85, *s.* 15.

4. *Rules to be observed in Prisons.*

General rules.] The following rules and regulations shall be observed and carried into effect in every gaol or house of correction, so far as such rules can be applied to the particular description or class of prisoners confined in such prison, 4 *G.* 4, *c.* 64, *s.* 10.

1st.—"The keeper of every such prison shall reside therein; he shall not be an under-sheriff or bailiff, nor shall be concerned in any occupation or trade whatsoever: no keeper or officer of a prison shall sell, nor shall any person in trust for him or employed by him sell, or have any benefit or advantage from the sale of any article to any prisoner, nor shall he, directly or indirectly, have any interest in any contract or agreement for the supply of the prison."

2nd.—"A matron shall be appointed in every prison in which female prisoners shall be confined, who shall reside in prison; and it shall be the duty of the matron constantly to superintend the female prisoners."

3rd.—"The keeper shall, as far as may be practicable, visit every ward, and see every prisoner, and inspect every cell, once at least in every twenty-four hours; and when the keeper or any other officer shall visit the female prisoners, he shall be accompanied by the matron, or in case of her unavoidable absence, by some female officer of the prison."

4th.—"The keeper shall keep a journal, in which he shall record all punishments inflicted by his authority or by that of

the visiting justices, and the day when such punishment shall have taken place, and all other occurrences of importance within the prison, in such manner as shall be directed by the regulations to be made under this Act, which journal shall be laid before the justices at every general or quarter sessions, to be signed by the chairman, in proof of the same having been there produced."

5th.—"Due provisions shall be made in every prison, for the enforcement of hard labour, in the cases of such prisoners as may be sentenced thereto, and for the employment of other prisoners. The means of hard labour shall be provided, and the materials requisite for the employment of prisoners shall be purchased, under such regulations as may be made for that purpose by the justices in general or quarter sessions assembled. If the work to be performed by the prisoners be of such a nature as to require previous instruction, proper persons shall be appointed to afford the same."

6th.—"The male and female prisoners shall be confined in separate buildings or parts of the prison, so as to prevent them from seeing, conversing, or holding any intercourse with each other, and the prisoners of each sex shall be divided into distinct classes, care being taken that prisoners of the following classes do not intermix with each other. *In gaols*—first, debtors and persons confined for contempt of court on civil process; second, prisoners convicted for felony; third, prisoners convicted of misdemeanors; fourth, prisoners committed on charge or suspicion of felony; fifth, prisoners committed on charge or suspicion of misdemeanors; or for want of sureties: *In houses of correction*:—first, prisoners convicted of felony; second, prisoners convicted of misdemeanors; third, prisoners committed on charge or suspicion of felony; fourth, prisoners committed on charge or suspicion of misdemeanors; fifth, vagrants. Such prisoners as are intended to be examined as witnesses in behalf of the crown in any prosecution, shall also be kept separate in all gaols and houses of correction." But see stat. 5 G. 4, c. 85, s. 10, *ante*, 564.

But nothing herein shall extend to prevent the justices from authorizing, at their discretion, the employment of any prisoner in the performance of any menial office within the prison, or for the purpose of instructing others; and if the keeper shall at any time deem it improper or inexpedient for a prisoner to associate with the other prisoners of the class to which he or she may belong, it shall be lawful for him to confine such prisoner with any other class or description of prisoners, or in any other part of the prison, until he can receive the directions of a visiting justice thereon, to whom he shall apply with as little delay as possible, and who in every such instance shall ascertain whether the reasons assigned by the keeper warrant such deviation from the established rules, and shall give such

orders in writing as he shall think fit, under the circumstances of the particular case.

7th.—"Female prisoners shall in all cases be attended by female officers."

8th.—"Every prisoner sentenced to hard labour shall, unless prevented by sickness, be employed so many hours in every day, not exceeding ten, exclusive of the time allowed for meals, as shall be directed by the rules and regulations to be made under this Act, except on Sundays, Christmas-day, and Good Friday, and on any days appointed by public authority for fasting or thanksgiving."

9th.—"Prayers, to be selected from the liturgy of the Church of England by the chaplain, shall be read at least every morning by the chaplain, the keeper, or by some other person, as by the rules and regulations shall be directed; and portions of the scriptures shall be read to the prisoners, when assembled for instruction, by the chaplain, or by such person as he may appoint or authorize."

10th.—"Provision shall be made, in all prisons, for the instruction of prisoners of both sexes in reading and writing; and that instruction shall be afforded, under such rules and regulations, and to such extent, and to such prisoners, as to the visiting justices may seem expedient."

11th.—"Prisoners under charge or conviction of any crime, shall attend divine service on Sundays, and on other days when such service is performed, unless prevented by illness or by other reasonable cause, to be allowed by the keeper, or unless their attendance shall be dispensed with by one of the visiting justices."

12th.—"No prisoner shall be put in irons by the keeper of any prison, except in cases of urgent and absolute necessity; and the particulars of every such case shall be forthwith entered in the keeper's journal, and notice forthwith given thereof to one of the visiting justices; and the keeper shall not continue the use of irons on the prisoner longer than four days, without an order in writing from a visiting justice, specifying the cause thereof; which order shall be preserved by the keeper as his warrant for the same."

13th.—"Every prisoner maintained at the expense of any county, riding, division, city, town, or place, shall be allowed a sufficient quantity of plain and wholesome food, to be regulated by the justices in general or quarter sessions assembled, regard being had (so far as may relate to convicted prisoners) to the nature of the labour required from or performed by such prisoners, so that the allowance of food may be duly apportioned thereto. And it shall be lawful for the justices to order for such prisoners of every description as are not able to work, or being able cannot procure employment sufficient to sustain themselves by their industry, or who may not be otherwise

provided for, such allowance of food as the said justices shall from time to time think necessary for the support of health. Prisoners under the care of the surgeon shall be allowed such diet as he may direct. Care shall be taken that all provisions supplied to the prisoners be of proper quality and weight. Scales and legal weights and measures shall be provided, open to the use of any prisoners, under such restrictions as shall be made by the regulations of each prison."

14th.—"Prisoners who shall not receive any allowance from the county, whether confined for debt or before trial for any supposed crime or offence, shall be allowed to procure for themselves, and to receive at proper hours, any food, bedding, clothing or other necessaries, subject to a strict examination, and under such limitations and restrictions, to be prescribed by the regulations to be made in manner directed by this Act, as may be reasonable and expedient to prevent extravagance and luxury within the walls of a prison; all articles of clothing and bedding shall be examined, in order that it may be ascertained that such articles are not likely to communicate infection or facilitate escape."

15th.—"No prisoner who is confined under the sentence of any court, nor any prisoners confined in pursuance of any conviction before a justice, shall receive any food, clothing, or necessaries, other than the gaol allowance, except under such regulations and restrictions as to the justices in general or quarter sessions assembled may appear expedient, with reference to the several classes of prisoners, or under special circumstances, to be judged of by one or more of the visiting justices."

16th.—"Due provisions shall be made for the admission, at proper times and under proper restrictions, of persons with whom prisoners committed for trial may desire to communicate; and such rules and regulations shall be made by the justices in general quarter sessions assembled, for the admission of the friends of convicted prisoners, as to such justices may seem expedient; and the justices shall also impose such restrictions upon the communication and correspondence of all such prisoners with their friends, either within or without the walls of the prison, as they shall judge necessary for the maintenance of good order and discipline in such prison."

17th.—"The surgeon shall examine every prisoner who shall be brought into the prison, before he or she shall be passed into the proper ward; and no prisoner shall be discharged from prison if labouring under any acute or dangerous distemper, nor until, in the opinion of the surgeon, such discharge is safe, unless such prisoner shall require to be discharged. The wearing apparel of every prisoner shall be fumigated and purified if requisite, after which the same shall be returned to him or her, or in case of the insufficiency of such

clothing, then other sufficient clothing shall be furnished, according to the rules and regulations of the prison; but no prisoner before trial shall be compelled to wear a prison dress, unless his or her own clothes be deemed insufficient or improper, or necessary to be preserved for the purposes of justice; and no prisoner who has not been convicted of felony, shall be liable to be clothed in a party-coloured dress: but if it be deemed expedient to have a prison dress for prisoners not convicted of felony, the same shall be plain."

18th.—"Every prisoner shall be provided with suitable bedding; and every male prisoner, with a separate bed, hammock, or cot, either in a separate cell, or in a cell with not less than two other male prisoners."

19th.—"The walls and ceilings of the wards, cells, rooms, and passages, used by the prisoners throughout every prison, shall be scraped and lime-washed at least once in the year; the day rooms, work rooms, passages, and sleeping cells shall be washed or cleansed once a week, or oftener if requisite. Convenient places for the prisoners to wash themselves shall be provided, with an adequate allowance of soap, towels, and combs."

20th.—"All prisoners shall be allowed as much air and exercise, as may be deemed proper for the preservation of their health."

21st.—"No tap shall be kept in any prison; nor shall spirituous liquors of any kind be admitted for the use of any of the prisoners therein, under any pretence whatever, unless by a written order of the surgeon, specifying the quantity and for whose use. No wine, beer, cider, or other fermented liquors shall be admitted for the use of the prisoners, except in such quantities, in such manner, and at such times, as shall be allowed by the rules hereafter to be made in pursuance of this Act."

22nd.—"No gaming shall be permitted in any prison; and the keeper shall seize and destroy all dice, cards, or other instruments of gaming."

23rd.—"No money under the name of garnish shall be taken from any prisoner on his or her entrance into the prison, under any pretence whatever."

24th.—"Upon the death of a prisoner, notice thereof shall be given by the keeper forthwith to one of the visiting justices, as well as to the coroner of the district, and to the nearest relative of the deceased, where practicable."

And by stat. 2 & 3 Vict. c. 56, s. 6, the following rules shall be observed in every prison in England and Wales, [except with respect to the first division of persons convicted of misdemeanors, 3 & 4 Vict. c. 25, s. 2, *ante*, p. 561,] in addition to and in amendment of the other rules and regulations which shall be in force in such prison:—

1st.—No keeper nor officer of a prison, nor any person in trust for or employed by him, shall let or have any benefit or advantage from the loan or letting of any article, or any dealing whatsoever to or with any prisoner:

2nd.—In every prison in which the keeper shall not visit every ward, and see every prisoner, and inspect every cell, once at least in every twenty-four hours, the keeper shall state the cause of omission in his journal:

3rd.—The wards, cells, and yards allotted to female prisoners shall be locked by keys in the custody of the matron, and secured by locks different from those securing the wards, cells, and yards allotted to male prisoners:

4th.—No prisoner shall be employed as turnkey, assistant turnkey, wardsman, yardsman, overseer, monitor, or schoolmaster, or in the discipline of the prison, or in the service of any officer thereof, or in the service or instruction of any other prisoner; but this rule shall not be taken to prevent the employment of any debtor, in that part of the prison in which he or she may be lawfully confined, in any manner in which he or she shall be willing to be employed, and which is consistent with his or her safe custody:

5th.—Every order of the surgeon for the admission of spirituous liquors or tobacco into the prison, shall be in writing, and shall be entered by him in his journal: and no tobacco in any shape shall be admitted for the use of any prisoner, except in such quantities, in such manner, and at such times as shall be ordered by the surgeon: and the surgeon shall enter in the English language day by day, in a journal which shall be kept in the prison, an account of the state of every sick prisoner, the name of his or her disease, and a description of the medicines and diet and any other treatment which he may order for such prisoner:

6th.—No prisoner shall be kept in irons for more than twenty-four hours without an order in writing from a visiting justice, or visitor where there are no visiting justices, specifying the cause thereof, and the time during which the prisoner is to be kept in irons, which order shall be preserved by the keeper as his warrant:

7th.—No money, food, perquisite, or gratuity of any kind, under the name of garnish, or under any name or pretence whatever, shall be taken or received from any prisoner on his or her entrance into the prison, or from any person on his or her account, or at any other time; but the keeper of every prison, or such other person as shall be directed by the rules of the prison, shall take charge of the monies and effects of every prisoner, for safe custody only, and for the purpose of being restored to such prisoner, or to some person on his or her behalf, under such regulations as may be made for that purpose:

8th.—No books or printed papers shall be admitted into any prison, but those which shall be chosen by the chaplain for the use of prisoners belonging to the Established Church, and by the visiting justices for the use of the other prisoners; and the keeper shall keep a catalogue of all books and printed papers allowed to be admitted into the prison: provided always, that in case there shall be a difference of opinion between the chaplain and visiting justices with respect to the books or papers proper to be admitted for the use of the prisoners belonging to the Established Church, reference shall be had to the bishop of the diocese, whose decision shall be final.

Additional rules, by whom made.] The court of mayor and aldermen of the city of London, so far as respects the prisons within the said city and liberties thereof, and five justices of the peace in general or quarter sessions of each county, &c., so far as respects the prisons within their respective jurisdictions, may make such further and additional rules for the government of such prisons respectively, and for the duties to be performed by the officers of the same, as to them may seem expedient; and the justices in general or quarter sessions assembled, shall and they are hereby required from time to time to cause copies of so much of the rules of each prison, as relates to the treatment and conduct of prisoners confined therein, to be printed in legible characters, and to be fixed up in conspicuous parts of every prison, so that every prisoner may be enabled to have access thereto. 4 *G.* 4, *c.* 64, *s.* 12.

The chairman of every quarter sessions shall transmit to one of the principal secretaries of state, a true and correct copy of all such additions to such rules and regulations, or alterations made therein, together with plans of any additions to the buildings of such prison, or alterations made in the construction thereof, during the same period; *Id. s.* 15; and upon the secretary of state certifying his approval thereof, such additional rules shall be binding on the sheriff, &c. 5 & 6 *W.* 4, *c.* 38, *s.* 2, *and see* 2 & 3 *Vict. c.* 56, *s.* 14.

Also, by stat. 2 & 3 Vict. c. 56, s. 2, the persons so authorized to make rules and regulations for the government of any prison in England or Wales, shall be empowered, if they shall think fit, to make rules for a different classification of prisoners of each sex in such prison, or for the individual separation of all or any of the prisoners confined therein, with due regard to their proper supervision, religious and moral instruction, and employment, and from time to time to alter or add to such rules; and the secretary of state, if he shall think that the rules so made and submitted to him for a different classification of prisoners of each sex, or for the individual separation of prisoners, are fit to be enforced in that prison, shall

subscribe a certificate or declaration that they are proper to be enforced, and the rules so made and certified, but not until they shall have been so certified, shall be enforced, and, (if the gaol or house of correction for which they shall be made, was, before the passing of this Act, within any provision of either stat. 6 G. 4, c. 64, or 5 G. 4, c. 85,) shall be taken to supersede the rules and provisions enacted in the first two recited Acts, or either of them, for the classification of prisoners of each sex confined therein.

Taking spirits into prisons.] "If any person, in contravention of the existing rules, shall carry or bring, or attempt or endeavour to carry or bring, into any prison to which this Act shall extend, any spirituous or fermented liquor," the gaoler, &c. may cause him to be apprehended, and carried before a justice of the peace (who is hereby empowered to hear and determine such offence in a summary way); and if he shall lawfully convict such person, he shall forthwith commit him to the common gaol or house of correction for any time not exceeding three months, unless he shall immediately pay down a sum not exceeding 20*l.*, nor less than 10*l.*, as the justice shall impose upon such offender, to be paid, one moiety to the informer, and the other moiety in aid of the rate applicable to the maintenance of such prison. 4 *G.* 4, *c.* 64, *s.* 40.

"And if any justice shall receive information upon oath, that any spirituous or fermented liquor is unlawfully kept or disposed of in any prison, he may enter and search, or issue his warrant to enter and search, for such liquor; and in case it shall be found, it shall be lawful for the person so finding to seize the same, and cause it to be disposed of as the justice shall direct; and if any gaoler or keeper of any prison shall sell, use, lend, or give away, or knowingly permit or suffer to be sold, used, lent, or given away, in such prison, or brought into the same, any spirituous or fermented liquor, in contravention of the existing rules of such prison, he shall for every such offence, over and above any other punishment by this Act enacted, forfeit and lose the sum of twenty pounds." *Id.*

5. *Visiting Justices.*

How appointed, and their duties.] The justices in every county, riding, division, district, city, town, or place to which this Act shall extend, at the general or quarter sessions, shall nominate two or more justices, who shall consent thereto, to be visitors of each gaol and house of correction within their jurisdiction, and to report the names and places of abode of such visiting justices to one of the principal secretaries of state; "and one or more of the visiting justices so appointed shall

personally visit and inspect each prison, at least three times in each quarter of a year, and oftener if occasion shall require, and shall examine into the state of the buildings, so as to form a judgment as to the reports, additions, or alterations which may appear necessary, strict regard being had to the classification, inspection, instruction, employment, or hard labour required by this Act, and shall further examine into the behaviour and conduct of the respective officers, and the treatment, behaviour, and condition of the prisoners, the means of setting them to work, the amount of their earning, and the expenses attending the prison, and of all abuses within the same, and in matters of pressing necessity, and within the powers of their commissions as justices, shall take cognizance thereof, and proceed to regulate and redress the same; and if the said visitors shall at any time observe or be satisfactorily informed of any extraordinary diligence or merit in any prisoners under their inspection, they shall report the same to the justices of peace for the county, riding, division, district, city, town, or place, at their next or any subsequent general or quarter sessions to be holden for the county or place in which such prison is situate, in order that such justices may, if they shall think proper, recommend any such offender to the royal mercy, in such degree or upon such terms as to them shall seem meet;" and if the duration of such prisoner's confinement be thereupon shortened, such prisoner shall, upon his discharge, together with necessary clothing, receive such sum of money for his or her subsistence, as the visiting justices shall think proper, not exceeding twenty shillings nor less than five, in case such offender shall have been confined for the space of one year, and so in proportion for any shorter term of confinement; and such sums of money, as also the expense of such clothing, shall be paid out of the county rate, or other rate applicable to the expenses of prisons. *Id. s.* 16.

Other justices visiting.] Any justice of the peace for any county, riding, or division, district, city, town, or place, may, at his own free will and pleasure, and without being appointed a visitor, enter into and examine any prison of such county, riding, &c., at such times and so often as he shall see fit; and if he shall discover any abuse therein, he is hereby required to report it in writing at the next general or quarter sessions of the peace, or adjourned sessions, which shall be holden for such county, riding, &c.; and when a report of any abuse in such prison shall be made by the visiting justices, or any other justice, such abuse shall be taken into immediate consideration by the justices at the general or quarter sessions at which such report shall be made; and they are hereby required to adopt the most effectual measures for inquiring into and rectifying such abuse, as soon as the nature of the case will allow. *Id. s.* 17.

How, with respect to prisoners in close confinement.] The visiting or other justice shall not converse or hold any intercourse or communication, (except as hereinafter mentioned,) with any person who may be committed to any such gaol or other prison, there to be kept in safe and close confinement; but nevertheless, any visiting justice may visit and inspect, at all times when he shall think proper, the apartment or place in which such person shall be confined, and also to see such person, and to hear or receive any representation from him as to his treatment in such prison, and to inquire and examine into the same. *Id. s.* 18.

6. *Inspectors.*

The secretary of state may appoint five inspectors, to visit and inspect, either singly or together, every gaol, bridewell, house of correction, penitentiary or other prison in any part of Great Britain, or may inquire into all matters touching the same, may examine the officer, inspect books, &c; and before the 1st of February in each year, they shall make reports of the gaols, &c., visited by them, copies of which shall be laid before parliament. 5 & 6 *W.* 4, *c.* 38, *s.* 7. Obstructing them, penalty not exceeding 20*l.*, or in default of payment, imprisonment for not more than one calendar month. *Id. s.* 8.

7. *Officers, &c. of Prisons.*

Keepers, matrons, &c.] The justices assembled at the general or quarter sessions are hereby empowered and required to "nominate and appoint such keepers, matrons, taskmasters, schoolmasters, and other officers, as to them may seem expedient, for every prison within their jurisdiction to which this Act shall extend, except the keeper of the common gaol [who in counties is always appointed by the sheriff for the time being,] and to remove, as occasion may require, all officers so by them nominated and appointed: provided always, that no woman shall be keeper of any prison in which male prisoners are confined." 4 *G.* 4, *c.* 64, *s.* 25.

And the justices at the general or quarter sessions are hereby empowered to fix salaries and allowances, to such amount and subject to such conditions as to them shall seem meet, for the keeper of the common gaol, and for every keeper, matron, taskmaster, schoolmaster, and officer of each gaol and house of correction within their jurisdiction, and to order such salaries, and the expense of such allowances, to be paid out of the rate lawfully applicable thereto, and the salaries and allowances so fixed to alter, reduce, augment, suspend, or stop from

time to time as occasion shall require; and in case any gaoler or keeper of any prison shall, from confirmed sickness, age or infirmity, become incapable of executing the office in person, the justices of the peace at any general or quarter sessions may, if they deem it expedient, grant to such gaoler or keeper such an annuity as they in their discretion shall think proportioned to the merits and time of his service, not exceeding two-thirds of the salary fixed for the succeeding keeper, and may order the payment thereof out of the rates lawfully applicable to the building or repairing of such gaols and prisons. *Id. s.* 26. *See also stat.* 55 *G.* 3, *c.* 50, *s.* 2.

"And if the persons authorized by law to appoint the gaoler or keeper of any prison, shall appoint such keeper by the style of governor, such governor shall have all the powers and duties of the gaoler or keeper of that prison; and all enactments made with regard to the gaoler or keeper, shall apply to the governor so appointed." 2 & 3 *Vict. c.* 56, *s.* 24.

"Also, the keeper of every prison, with the approval of the visiting justices, may appoint an officer of the prison to act as deputy keeper, whenever the keeper shall be necessarily absent from the prison; and during such necessary absence of the keeper, the deputy keeper shall have all the powers and duties of the keeper of the prison, and the keeper shall be civilly responsible for all acts and omissions of his deputy keeper." *Id. s.* 7.

Chaplain, his appointment, salary, &c.] The justices assembled in general or quarter sessions shall from time to time nominate for each prison within their jurisdiction, to which this Act shall extend, a clergyman of the Church of England to be chaplain thereof; and the said justices may, if it seem to them expedient, nominate the same clergyman to be and officiate as chaplain to any two prisons situate within a convenient distance from each other; and the said justices are hereby authorized to appoint a salary to be paid to the clergyman so nominated chaplain as aforesaid, out of the county rate, or rate lawfully applicable to the maintenance of such prisons; and the amount of salary shall be regulated in the following manner: *videlicet*, where the chaplain shall be appointed to one prison only, and the number of prisoners, including debtors, which the said prison is calculated to receive, does not exceed fifty, then the salary to be paid to him shall not be more than 150*l.*; where the chaplain shall be appointed to one prison only, and the number of prisoners, including debtors, which the said prison is calculated to receive, does not exceed one hundred, then the salary shall not be more than 200*l.*; where the chaplain shall be appointed to one prison only, calculated to contain more than one hundred prisoners, including debtors, the salary shall not be more than 250*l.*; and where the chap-

lain shall be appointed to one prison only, calculated to contain more than two hundred, and where the chaplain shall be appointed to two prisons, whatever the number of prisoners such two prisons may be calculated to contain, it shall be lawful for the justices to appoint the salary at their discretion, with reference to the duties to be performed; provided also, that when any two or more prisons shall be under the custody of one and the same keeper, they shall be considered as one prison with reference to the duties and salary of the chaplain; provided also, that in case of sickness or necessary engagement, the chaplain shall appoint a clergyman to be his substitute for the occasion, such substitute being approved of by the visiting justices: and the name and residence of such substitute shall be specified in the chaplain's journal. 4 *G.* 4, *c.* 64, *s.* 28.

But by stat. 2 & 3 Vict. c. 56, s. 16, "no person, who shall be appointed, after the commencement of this Act, to the office of chaplain of any prison, in which the average number of prisoners confined at one time during the three years next before his appointment shall not have been less than one hundred, shall hold any benefice with cure of souls, or any curacy, whilst holding the office of chaplain of such prison; and that in every prison in which the average number of prisoners confined at one time during the three years next before his appointment, shall not have been less than two hundred and fifty, it shall be lawful for the justices or other persons having the appointment of the chaplain, to appoint, if they shall see fit, an assistant chaplain or assistant chaplains, and for the persons having the control of the funds applicable to the expenses of such prison to fix the salary to be paid to such assistant chaplain or assistant chaplains, and to make orders for the payment thereof out of the fund applicable to those expenses: provided always, that every such chaplain and assistant chaplain shall reside within a distance not exceeding one mile from the prison in which they hold their chaplaincies." 2 & 3 *Vict. c.* 56, *s.* 16.

No clergyman so nominated shall officiate, until he shall have obtained a licence for that purpose from the bishop of the diocese; and notice of such nomination shall, within one month after it shall take place, be transmitted to the bishop, by the clerk of the peace or town-clerk. 4 *G.* 4, *c.* 64, *s.* 29.

In case any chaplain shall, from confirmed sickness, age, or infirmity, become incapable of executing the office in person, the justices of the peace, at any general or quarter sessions of the county, &c. shall take the circumstances of the case into their consideration; and may grant to such chaplain such annuity as they in their discretion shall think proportionate to the merits and time of his services, (not exceeding two-thirds of the salary fixed for the succeeding chaplain), and may order the payment out of the rates lawfully applicable to the building and repairing such gaols and prisons. *Id. s.* 32.

Chaplain's duties.] "Every such chaplain shall on every Sunday, and on Christmas-day and Good Friday, perform the appointed Morning and Evening Services of the Church of England, and preach at such time or times, between the hours of nine and five of the day, as shall be required by the rules and regulations to be made as directed by this Act; and shall catechise or instruct such prisoners as may be willing to receive instruction; and shall likewise visit the prison on such other days, and perform such other duties, as shall be required by the rules and regulations to be made as directed by this Act; and shall administer the Holy Sacrament of the Lord's Supper to such prisoners as shall be desirous, and as such chaplain may deem to be in a proper frame of mind to receive the same; and such chaplain shall also frequently visit every room and cell in the prison occupied by prisoners, and shall direct such books to be distributed and read, and such lessons to be taught in such prison, as he may deem proper for the religious and moral instruction of the prisoners therein; and he shall visit those who are in solitary confinement; and it shall be his particular duty to afford his spiritual assistance to all persons under warrant or order for execution; and he shall have free access to all persons convicted of murder, any law, statute, or usage to the contrary notwithstanding; except to such persons as shall be of a religious persuasion different from that of the Established Church, who shall have made a request that a minister of such persuasion shall be allowed to visit them; and every such chaplain shall communicate from time to time to the visiting justices any abuse or impropriety which may have come to his knowledge; and he shall further keep a journal, in which he shall enter the times of his attendance on the performance of his duty, with any observations which may occur to him in the execution thereof, and such journal shall be kept in the prison, but shall regularly be laid before the justices for their inspection at every quarter sessions, and shall be signed by the chairman of the sessions, in proof of the same having been there produced; and if it shall appear to the justices in general or quarter sessions assembled, that any chaplain is incompetent to the due performance of his duties, or is unfit to be continued in his office, or shall have refused or wilfully neglected to perform the duties required of him by the rules and regulations to be made as directed by this Act, they are hereby empowered to remove him from such office." *Id. s.* 30.

And there shall be kept, in every prison to which this Act shall extend, a book, in which the chaplain and every other officer of the said prisons not residing within such prisons, but attending on or required to attend on such prison, shall regularly insert the date of every visit made by such chaplain or other such officer; and every such entry shall be signed with the name and in the proper handwriting of such chaplain or

other officer, and shall contain such remarks as may be thought necessary on the occasion of any such visit; and every keeper of every such prison shall be responsible for the safe custody of such book, whole, unmutilated, and unaltered, and shall at all times, when required so to do, produce such book for inspection to the justices at every general or quarter sessions, and to the visiting justices, or to any justice of the peace for the county, &c., wherein such prison shall be situate; and the chaplain shall, at every Michaelmas quarter sessions, deliver to the justices a statement of the condition of the prisoners, and his observations thereupon. *Id. s.* 34.

Other ministers of religion.] If any prisoner shall be of a religious persuasion differing from that of the Established Church, a minister of such persuasion, at the special request of such prisoner, shall be allowed to visit him or her at proper and reasonable times, under such restrictions imposed by the visiting justices as shall guard against the introduction of improper persons, and as shall prevent improper communications. *Id. s.* 31.

Surgeons.] The justices, in general or quarter sessions assembled, shall from time to time appoint a surgeon, being a member of one of the royal colleges of surgeons, to each of the prisons within their jurisdiction to which this Act shall extend; and every such surgeon shall visit every prison to which he shall be so appointed twice at least in every week, and oftener if necessary, and shall see every prisoner confined therein, whether criminal or debtor, and report to every general or quarter session the condition of the prison, and the state of health of the prisoners under his care; and he shall keep a journal, in which he shall enter the date of every attendance on the performance of his duty, with any observations which may occur to him in the execution thereof, and shall sign the same with his name; and such journal shall be kept in the prison, but shall regularly be laid before the justices for their inspection at every quarter sessions, and shall be signed by the chairman of the sessions, in proof of the same having been there produced; and the justices, at every general or quarter sessions after such appointment, may direct a reasonable sum to be paid as salary to such surgeon, and also such sums of money as shall be due for medicines and other articles for the sick. *Id. s.* 33. *See also s.* 34, *et supra.*

8. *Reports as to the State of the Prison.*

By the keeper, to the sessions.] The gaoler and keeper of every gaol and house of correction, shall make a report in

writing of the actual state and condition of every such gaol and house of correction, and of the number and description of prisoners confined therein, to the justices at the general or quarter sessions; and shall attend and give answer, upon oath, "to all such inquiries as shall be made by the justices at such sessions, with respect to the state and condition of every such gaol and house of correction, and of the prisoners confined therein, and with respect to any other matters and things relating to the said gaol and house of correction, respecting which such justices shall deem it necessary to make an inquiry, for the purpose of proceeding and continuing to carry this Act into execution, and of ascertaining how far every such gaol and house of correction is capable of affording the means of the classification required by this Act." *Id. s.* 14.

At each quarter sessions of the peace the keeper of every prison within the jurisdiction of the court, shall, under a penalty of 10*l.*, deliver to such court a certificate, signed by himself, how far the rules laid down for the government of his prison have been complied with, and shall point out any and every deviation therefrom which may have taken place. *Id. s.* 21.

And one week before the Michaelmas sessions, in every year, such keeper shall make up a return of the state of the prison for the year then ending, in the form contained in the schedule annexed to [stat. 2 & 3 Vict. c. 56. *Id. s.* 10], and shall deliver the same to the clerk of the peace or his deputy, for the use of the justices assembled at such quarter sessions. 4 *G.* 4, *c.* 64, *s.* 22.

By the keeper, to the secretary of state.] The keeper of every prison shall, on the second day next after the termination of every session of the peace or gaol delivery, under a penalty of 20*l.*, transmit by the post of that day to one of the secretaries of state, a calendar containing the names, the crimes, and the sentences of every prisoner tried at such session, and distinguishing, with respect to all prisoners capitally convicted, such of them as may have been reprieved by the court, and stating the day on which execution is to be done upon those who have not been reprieved. *Id. s.* 20.

By the visiting justices, to the sessions.] At every general or quarter sessions, "the visiting justices shall make a report in writing of the state and condition of each prison within their jurisdiction, of what repairs, additions, or alterations shall have been made or may be required, and of any abuse or abuses which they may have observed, or of which they may have received information, in the management of the prison, as well as of the general state of the prisoners as to morals, discipline, employment, and hard labour, and observance of

rules; and the justices assembled at such sessions shall proceed to consider every such report, and so act forthwith as they may see occasion." *Id. s.* 23.

By the sessions, to the secretary of state.] And "a general report, founded on the report of the visiting justices, on the report of the chaplain or chaplains, and on the certificates of the keepers of the several prisons, shall be prepared by the clerk of the peace, and submitted to the justices assembled at every Michaelmas quarter sessions, and, when approved by the justices at such sessions, such report shall be signed by the chairman of such sessions, and shall be by him transmitted (together with a copy of the schedule delivered by the gaoler) to one of his Majesty's principal secretaries of state,"—a copy of which report, with the said schedule attached to it, shall be laid before parliament." *Id. s.* 24.

And within fourteen days after the commencement of such Michaelmas quarter sessions, the chairman of such sessions shall also transmit a correct statement of the establishment of officers and servants employed in every prison within the jurisdiction of the sessions, specifying the number and description of such officers and servants, the salaries and emoluments of each, and by whom such officers and servants are appointed. 5 *G.* 4, *c.* 85, *s.* 8.

9. *The Prisoners.*

In what cases obliged to labour.] And whereas persons are often committed to prison for trial, who are willing to be employed in such work or labour as can be conveniently executed or done in the prison to which they are so committed, and it is fit that such persons should be so employed rather than that they should be obliged to remain idle during their confinement; be it therefore enacted, that any one or more visiting justice or justices of any prison to which this Act shall extend, may authorize, by an order in writing, the employment of any such prisoners, with their own consent, [freely given, and not extorted by any deprivation or threat of deprivation of any prison allowance, 5 *G.* 4, *c.* 85, *s.* 16], in any such work or labour; and the keeper of such prison may employ such prisoner in such work or labour accordingly: provided always, that it shall not be lawful to place together, on account of such employment, any prisoners who would otherwise be kept separate under the provisions of this Act. 4 *G.* 4, *c.* 64, *s.* 37.

A prisoner committed for trial, however, shall be allowed such food as may be sufficient for the support of health, without being obliged to perform any work as the condition of such allowance. 5 *G.* 4, *c.* 85, *s.* 17.

And whereas persons convicted of offences are frequently sentenced to imprisonment, without being sentenced to hard labour; be it therefore enacted, that two or more visiting justices of any prison may order that all such persons confined in such prison in pursuance of any sentence or conviction, except such prisoners as shall maintain themselves, shall be set to some work or labour not severe; and it is hereby declared, that no such prisoner, who shall be of ability to earn, and who shall have the means of earning or of otherwise providing for his own subsistence, shall have any claim to be supported at the expense of the county, &c. or by the sheriff or the keeper of the prison; provided that when such ability shall cease by reason of sickness, infirmity, the want of sufficient work, or from any other cause, every such person shall, during the continuance of his inability, receive such provision and support as shall be directed for other convicted prisoners in the same prison; and the keeper of the prison shall keep an account of the work done. 4 *G.* 4, *c.* 64, *s.* 38.

Also by stat. 2 & 3 Vict. c. 56, s. 17, it shall be lawful to keep to hard labour every offender against whom sentence of death shall be recorded and not pronounced by the court, while he or she shall remain in the gaol or house of correction, if his or her health shall permit; and it shall be lawful for one of Her Majesty's principal secretaries of state, if he shall think fit, to order that any such offender be removed from the common gaol to the house of correction, and there be kept to hard labour: provided, however, that it shall not be lawful to continue to keep any such offender to hard labour, if the sentence of death so recorded and not pronounced by the court shall at any time be commuted for any punishment of which hard labour does not form a part.

And by the same statute, no officer of any prison shall be allowed any wages or profit in money or otherwise in respect of the work performed by any prisoner; and the allowances which the visiting justices shall grant out of his or her earnings to any prisoner committed for trial, against whom no bill of indictment shall be found by the grand jury, or who upon his or her trial shall be acquitted of the offence or offences with which he or she was charged, shall be such as, under all the circumstances attending the case of such prisoner, shall appear to them fit and reasonable, and shall not be given to such prisoner until he or she shall be discharged from the prison. *Id. s.* 8.

Attempts to escape.] "If any person shall convey or cause to be conveyed into any prison to which this Act shall extend, any mask, vizor, or other disguise, or any instrument or arms proper to facilitate the escape of any prisoners, and the same shall deliver or cause to be delivered to any prisoner in such

prison, or to any other person there, for the use of any such prisoner, without the consent or privity of the keeper of such prison, every such person shall be deemed to have delivered such vizor or disguise, instrument or arms, with intent to aid and assist such prisoner to escape or attempt to escape; and if any person shall, by any means whatever, aid and assist any prisoner to escape or in attempting to escape from any prison, every person so offending, whether an escape be actually made or not, shall be guilty of felony," and be transported for not more than fourteen years. 4 *G.* 4, *c.* 64, *s.* 43.

Any offender escaping, breaking prison, or being rescued therefrom, may be tried either in the jurisdiction where the offence was committed, or in that where he shall be apprehended and retaken; and in case of any prosecution for any such escape, attempt to escape, breach of prison, or rescue, either against the offender escaping, &c. or against any other person or persons aiding or assisting therein, a certificate given by the clerk of assize, or other clerk of the court in which such offender shall have been convicted, shall, together with due proof of the identity of the person, be sufficient evidence to the court and jury of the nature and fact of the conviction, and of the species and period of confinement to which such person was sentenced. *Id. s.* 44.

Assaulting or resisting the officers.] By stat. 5 & 6 Vict. c. 98, s. 25, every person who shall assault or violently resist any officer of a prison in the execution of his duty, or who shall aid or incite any person so to assault or resist any such officer, shall for every such offence, on conviction thereof by the oath of one or more witnesses, or upon his or her own confession, before two justices of the peace, be liable to a penalty not more than 5*l.*, to be levied, if not forthwith paid, by distress and sale of the goods and chattels of the offender, or, in the discretion of the justices before whom he or she shall be convicted, may be imprisoned, with or without hard labour, for any time not more than one calendar month, or if the offender be already under sentence of imprisonment, then such offender for every such offence shall be imprisoned with or without hard labour, for any time not more than six calendar months, in addition to so much of the term for which he or she was originally sentenced as may then be unexpired.

Other offences by them.] "The keeper of every prison shall have power to hear all complaints touching any of the following offences: (that is to say,) disobedience of any of the rules of the prison; assaults by one person confined in such prison upon another, when no dangerous wound or bruise is given; profane cursing and swearing; any indecent behaviour, and any irreverent behaviour at chapel (all of which are declared

to be offences by this Act, if committed by any description of prisoners); absence from chapel without leave; idleness or negligence in work, or wilful mismanagement of it, which are also declared to be offences by this Act, if committed by any prisoner under charge on conviction of any crime: and the said keeper may examine any person touching such offences, and may determine thereupon, and may punish all such offences by ordering any offender to close confinement in the refractory or solitary cells, and by keeping such offenders upon bread and water only, for any term not exceeding three days." 4 *G.* 4, *c.* 64, *s.* 41.

And "in case any criminal prisoner shall be guilty of any repeated offence against the rules of the prison, or shall be guilty of any greater offence than the gaoler or keeper is by this Act empowered to punish," the gaoler shall report the same to the visiting justices, and any one such justice, or any other justice acting in and for the county, &c. may inquire upon oath, and determine, concerning any such matter so reported to him, and order the offender to be punished by "close confinement for any term not exceeding one month, or by personal correction in the case of prisoners convicted of felony or sentenced to hard labour." *Id. s.* 43.

Not to be jurors upon inquests.] "In case the coroner shall hold an inquest on the body of any prisoner who shall have died within the prison, none of the prisoners confined in that prison shall be a juror on such inquest." *Id. s.* 11.

Removal of them.] Whenever the justices in general or quarter sessions assembled shall deem it necessary that prisoners shall be removed from any house of correction within the jurisdiction, in order that the same may be repaired, &c. or on account of any contagious or infectious disease therein, &c. or for any of the purposes of this Act, they may, by an order in writing, signed by the chairman, direct the keeper of such house of correction to remove such prisoners to such other prison or place of confinement within their jurisdiction as they shall appoint, and by a like order in writing, they may direct the said keeper to remove to the house of correction when repaired, enlarged, improved, or rebuilt, or when such contagious disease shall have ceased, &c. all such prisoners as shall then remain in his custody; or if the prisoners be debtors or other prisoners in any common gaol, the said justices shall give due and sufficient notice thereof in writing to the sheriff of such county, &c. whereupon the said sheriff may remove such debtors or other prisoners to such prison or other place of confinement within his jurisdiction as the justices with the consent of the said sheriff shall appoint. *Id. s.* 51.

And whenever any contagious disease or other emergency shall render necessary the immediate removal of the prisoners, the visiting justices may issue an order under their hands and seals to the keeper of every such prison to remove such prisoners; *Id. s.* 52; which order shall be laid before the justices at the next general or quarter sessions of the peace. *Id. s.* 53.

Benefactions for them.] Where bequests have been made, or benefactions given, for supplying poor criminal prisoners with food or clothing, the justices in general or quarter sessions may apply the same "for the benefit of such poor prisoners, either by providing them with the implements of labour, or with the means of returning to their own homes, or in such manner as to the magistrates may appear expedient." *Id. s.* 35. Provisions are made for ascertaining and discovering such bequests and benefactions, by sect. 36.

Allowance to them on their discharge.] Any one or more of the visiting justice or justices of any prison to which this Act shall extend, from whence any prisoner shall be discharged, may direct that such moderate sum shall be given to such prisoner, who shall not have the means of returning to his or her family or place of settlement, or resorting to any place of employment or honest occupation, as in the judgment of such justice or justices shall be requisite for such purpose, under all the circumstances attending the case of any such prisoner; and such sum shall be paid by the keeper of such prison to or for the use of such prisoner, for the purpose aforesaid; and that all such sums shall be provided for either out of such bequests or benefactions as aforesaid, or in such manner as is by this Act directed with respect to the expense of the support and maintenance of the prisoners in such prisons. *Id. s.* 39. *See also s.* 16, *ante*, p. 578.

But by stat. 5 G. 4, c. 85, for more effectually providing prisoners upon their discharge, with the means of proceeding to their place of settlement, the visiting justices are authorized to furnish them with passes, in manner following:—The justices at sessions shall cause blank printed forms of passes, in the form given by the statute, to be issued to the keepers of the different prisons within their jurisdiction; and when a prisoner is desirous to have the means of returning to his place of settlement, any two visiting justices, after examining him on oath as to his settlement, and upon such further evidence as can be procured, shall, if they deem it expedient, fill up one of the printed forms of passes, and give it the prisoner, entitling him to a sum not exceeding 1½*d.* per mile for himself, and 1*d.* for each of his children who have been in prison with him, by reason of their being in a state of nurture or without other protection. *Sects.* 22, 23. And the overseer of the poor

of such place through which he shall pass, shall pay him the sum specified in the pass for the number of miles to the next town or place, and shall indorse the same on the pass, and take the party's receipt; *Id. s.* 24: and he shall be reimbursed by the treasurer of the county. *Id. s.* 25. And at the last place of receiving this allowance, the party shall deliver up the pass to the overseer, who shall thereupon transmit the same, by post under cover indorsed "Pass of a discharged prisoner," to the keeper of the prison from which the party was discharged. *Id. s.* 26.

10. *Prosecutions for Penalties, &c.*

Conviction.] The conviction shall be in the following form, or to the same effect:—

Be it remembered, that on —— in the year of our Lord ——, A. B. is convicted before me, C. D. one of Her Majesty's justices of the peace for the —— of ——, for that the said A. B. [specifying the offence, and the time and place when and where the same was committed, as the case shall be], *and the said A. B. is for his said offence adjudged by me the said justice to forfeit and pay the sum of ——, or to be imprisoned in —— for the space of ——* [as the case shall be]. *Given under my hand and seal the day and year first above-mentioned.*

And no order or conviction shall be quashed for want of form, or be removed by *certiorari*, &c. 4 *G.* 4, *c.* 64, *s.* 72.

Penalty, how levied.] All fines, forfeitures, and penalties imposed by this Act, or which shall be imposed by virtue of any rule to be made in pursuance thereof, shall, on conviction of the offender before one justice of the peace, be levied by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice of the peace, to be paid to the treasurer of the county, &c. and applied in aid of the rate applicable to the purpose of this Act; and for want of sufficient distress, the offender shall be committed to the common gaol or house of correction for not more than six calendar months nor less than one. *Id. s.* 69.

Appeal.] Any person aggrieved by any conviction, may appeal to the quarter sessions of the county, &c. within four calendar months after the cause of such complaint shall have arisen, first giving ten days' clear notice in writing of his intention to bring such appeal, and of the matter thereof, to the convicting justice or justices, and to the clerk of the peace, and within two days after such notice entering into recognizance before some justice for such county, &c. with two sufficient sureties, conditioned to try such appeal, and abide

the order of and to pay such costs as shall be awarded by the justices at such session; and the justices at such session, upon proof of such notice and recognizance, shall hear and determine the matter, and award such costs to the parties appealing or appealed against as they shall think proper. *Id. s.* 71.

Actions, &c.] If any action be brought against any person for any thing done in pursuance of this Act, he may plead the general issue, and give the special matter in evidence, and if there be judgment for the defendant, he shall have double costs; and though a verdict shall be given for the plaintiff, he shall not have costs, unless the judge shall certify his approbation of the action, and of the verdict. *Id. s.* 73. Also, the cause of action shall be laid in the proper county, and the action brought within six calendar months. *Id. s.* 75.

II. *Gaols of Counties divided into Ridings, &c.*

In counties divided into ridings or divisions, having separate commissions of the peace, the provisions of stat. 4 G. 4, c. 64, could not be carried into effect, with respect to the county gaol, because there was no court of quarter sessions holden for the county at large. To remedy this, it was enacted by stat. 5 G. 4, c. 12, that a court of sessions for the gaol of such county shall be holden [in the gaol, or within a mile thereof, *s.* 5,] of which every justice of the peace for each of the ridings shall be a member, and any two of such justices may hold the court; and the justices at such court, or any adjournment thereof, are empowered to transact all matters and things, with respect to the county gaol, which in other counties is done by the justices at quarter sessions or at any adjournment thereof. *Sect.* 1. Notice shall be given in some of the newspapers circulating in the county, of the time and place of holding such court. *Id. s.* 4.

A chairman shall be elected; also a clerk, who with reference to this court shall have all the powers vested in the clerk of the peace by stat. 4 G. 4, c. 64, and shall retain his situation until another clerk shall be elected in his stead. *Id. s.* 2.

The expenses of such county gaol shall be paid out of the county rates of the respective ridings or divisions in the proportions already fixed, or from time to time to be fixed by such court, or (where any riding or division shall be dissatisfied with the proportions so fixed) by an arbitrator appointed by the judges of assize for the county. *Id. ss.* 7, 8; *and* 5 *G.* 4, *c.* 85, *s.* 21.

In other respects, the stat. 4 G. 4, c. 64, and the other statutes incidentally noticed under the last head, are as applicable to the county gaol of a county divided into ridings or divisions, as to any other county gaol.

III. *Gaols and Houses of Correction in Boroughs.*

Council to have the same power as sessions.] The several councils of the cities of Canterbury, Lichfield, and Lincoln, and of every other borough named in the schedules to the Act for regulating corporations, shall have all the powers for building, enlarging, and repairing any gaol or house of correction belonging to their city or borough, which the justices having the government or ordering of any gaol or house of correction in any city or borough within the provisions of stat. 4 G. 4, c. 64, or stat. 5 G. 4, c. 85, had in general or quarter sessions before the passing of the said Act for regulating corporations; subject nevertheless to any alteration made in the last-recited Acts, or either of them, by stat. 5 & 6 W. 4, c. 38; and all things by any Act of parliament provided to be done at any general or quarter sessions of the peace, in relation to the building, enlarging, or repairing any such gaol or house of correction, shall be done at some quarterly meeting of the council of the city or borough: provided always, that before the building, enlarging, or repairing any such gaol or house of correction, the expediency thereof shall first be certified under the hand of the recorder or other judge of such city or borough; provided also, that all rules and regulations made for the government of any prisoner confined in any such gaol or house of correction, shall be approved by two or more justices acting in and for that city or borough, before they shall be transmitted to the secretary of state. 1 *Vict. c.* 78, *s.* 37. *And see* 2 & 3 *Vict. c.* 56, *s.* 1, *ante*, p. 557.

To be regulated by the justices.] All the powers of regulation which before the passing of the said Act for regulating corporations were possessed by the justices having the government or ordering of any such gaol or house of correction, and all things by any Act of parliament provided to be done at any general or quarter sessions of the peace in relation to the regulating of any such gaol or house of correction, shall, subject to any such alteration as aforesaid, be exercised or done by the justices of the city or borough to which such gaol or house of correction shall belong, and for that purpose the justices shall hold a quarterly session at the usual times of holding quarterly sessions of the peace; provided that no order made by the justices in pursuance of these powers, which shall require the expenditure or payment of any money, shall be of force, until confirmed by the council of that city or borough. 1 *Vict. c.* 78, *s.* 38.

Chaplain.] In every borough gaol and house of correction, a clergyman of the Church of England shall be appointed to be chaplain thereof, by the same authority by which the keeper is

appointed; [*See R.* v. *Bp. of Bath*, 5 *Q. B.* 147;] but no such chaplain shall officiate in any prison until he shall have obtained a licence from the bishop of the diocese, or for any longer time than while such licence shall continue in force; and notice of every such appointment shall, within one month after it shall take place, be transmitted to the bishop, by the town clerk. 2 & 3 *Vict. c.* 56, *s.* 15.

Council not to be concerned in contracts.] No mayor, alderman, councilman, or other officer of a corporation, shall be interested, or concerned or employed, directly or indirectly, as an architect, builder, artist, mechanic, workman, merchant, trader, or otherwise howsoever, in any part of the work to be done, or materials to be supplied, at any such gaol or house of correction, or in any contract whatever relating thereto; and if any one holding such office shall be so interested, concerned, or employed in such work or contract as aforesaid, he shall thenceforward be disqualified from continuing to hold such office, and also from being thereafter elected or appointed to fill any corporate office within any such city or borough. 1 *Vict. c.* 78, *s.* 39.

Gaols within what jurisdiction.] The mayor, aldermen, and burgesses of any borough, by their council, may contract for the purchase of, and to have and hold to them and to their successors, any lands not exceeding in the whole five acres, either within or beyond the limits of the borough, and to build thereon a town hall, council house, police office, gaol or house of correction for the borough; and any such gaol or house of correction, although built beyond the limits of the borough, may be declared by a resolution of the council, and upon such resolution shall be taken to be, the gaol or house of correction of the borough, and shall be within the same jurisdiction and shall be governed and regulated in like manner, as if within the limits of the borough. *Id. s.* 40.

All county gaols, courts, depôts for arms, and all lands, buildings, easements, and appurtenances thereunto belonging, which before stat. 6 & 7 W. 4, c. 103, were in, of, or belonging to any county, shall be taken to be and considered, and shall remain part and parcel of such county, and under the exclusive jurisdiction of the authorities of such county, as if the said last-mentioned Act had not passed. *Id. s.* 41.

As to contracts of boroughs with the justices of the counties within which such boroughs respectively are situate, for the keeping and maintenance of their prisoners in the county gaol or house of correction, see stats. 5 *G.* 4. *c.* 85, *ss.* 1—7; 5 & 6 *W.* 4, *c.* 76, *s.* 114; 2 & 3 *Vict. c.* 56, *s.* 9, *and R.* v. *Johnson*, 8 *Law J.* 99, *m*; 5 & 6 *Vict. c.* 98, *ss.* 18, 22, *and see ss.* 19, 20, 21; and as to their contracts with neighbouring boroughs,

for the keeping and maintenance of their prisoners, in the gaol or house of correction there, see 5 & 6 *W.* 4, *c.* 76, *s.* 115.

IV. *Prison for Juvenile Offenders.*

Where.] By stat. 1 & 2 Vict. c. 82, s. 1, Her Majesty, by warrant under the royal sign manual, may appoint that certain buildings at *Parkhurst*, in the Isle of Wight, shall be used as a prison for the confinement of young offenders as are hereinafter specified, as soon as the same can be fitted and completed for that purpose; and the said buildings shall thereupon be within the provisions of stat. 5 & 6 W. 4, c. 58.

Officers.] One of Her Majesty's principal secretaries of state may appoint for *Parkhurst* prison a governor, a chaplain (being a clergyman not having any other cure of souls), a surgeon, a matron, and such other officers, assistants, and servants as may be necessary, and may fix their salaries, and at pleasure may remove the same and appoint others in their room. *Id. s.* 2.

The governor or other person having the custody of the offenders shall have the same powers over such offenders as are incident to the office of a sheriff or gaoler, and be liable as such. *Id. s.* 6.

Visitors.] Her Majesty with the advice of her privy council, may nominate and appoint three or more fit and discreet persons to be visitors of the said prison, and one or more of such visitors shall personally visit such prison, at least three times in each quarter of a year, and oftener if occasion shall require, and shall examine into the behaviour and conduct of the respective officers, and the treatment, behaviour, and condition of the prisoners, and of all abuses within the prison; and if he or they shall discover any abuse therein, he or they shall report the same in writing to one of Her Majesty's principal secretaries of state. *Id. s.* 9.

Rules and Regulations.] The secretary of state may make rules for the government and regulation of *Parkhurst* prison, and for the discipline of the offenders imprisoned therein, which shall be laid before parliament. *Id. s.* 7.

The prisoners.] One of Her Majesty's principal secretaries of state may direct the removal to *Parkhurst* prison of any young offender, male or female, as well those under sentence or order of transportation as those under sentence of imprisonment, who having been examined by an experienced surgeon or apothecary, shall appear to be free from any putrid or infectious distemper, and fit to be removed. *Id. s.* 3.

And every offender who shall be so removed to *Parkhurst* prison shall continue there, until he shall be transported, or become entitled to his liberty, or until the secretary of state shall direct his removal to the prison from which he shall have been brought. *Id. s.* 4.

Their removal in what cases.] The secretary of state may order any offender to be removed from *Parkhurst* prison as incorrigible; and in every such case the offender so removed shall be liable to be transported or confined, under his original sentence of transportation or imprisonment. *Id. s.* 5.

Offences by prisoners.] It shall be lawful for the secretary of state from time to time to specify, by such regulations as aforesaid, such offences which, if committed in *Parkhurst* prison by male convicts, shall appear to him deserving of corporal punishment; if any male offender in *Parkhurst* prison shall commit any offence whereby he shall, under any regulation then in force, become liable to corporal punishment, the governor of the said prison shall have power to inflict such punishment. *Id. s.* 8.

Breaking prison.] If any offender who shall be ordered to be confined in *Parkhurst* prison, shall break prison or escape from the place of his confinement, or in his conveyance to such place of confinement, such offender shall be punished, if under sentence of imprisonment, by an addition not exceeding two years to the term for which he at the time of his breach of prison or escape was subject to be confined, and if under sentence of transportation, in such manner as persons under sentence of transportation, escaping from or breaking out of any other prison or place of confinement, are liable to be punished; and if the offender shall afterwards be convicted of a second escape or breach of prison, he shall be adjudged guilty of felony; and if any offender who shall be ordered to be confined in the said prison, shall attempt to break prison or escape, or shall forcibly break out of his cell, or shall make any breach therein with intent to escape, he shall on conviction be punished by imprisonment for a term not exceeding twelve calendar months, in addition to the punishment to which he at the time of committing any such offence was subject. *Id. s.* 12.

Every person who shall rescue any offender, ordered to be confined within *Parkhurst* prison, either during the time of his conveyance to it, or whilst such offender shall be in the custody of the person under whose charge he shall be so confined, and also every person who shall aid in any such rescue, shall be guilty of felony; and every person having the custody of any such offender, or employed by the person having such custody, as a keeper, under-keeper, turnkey, assistant, or guard, who shall knowingly allow such offender to escape, and also every

person who shall, by supplying arms, tools, or instruments of disguise, or otherwise in any manner, aid any such offender, in any attempt to make an escape, though no escape be actually made, or who shall attempt to rescue any such offender, or aid in any such attempt, though no rescue be actually made, shall be guilty of felony; and every person having such custody, or being so employed by the person having such custody as aforesaid, who shall carelessly allow any such offender to escape, shall be guilty of a misdemeanor, and being lawfully convicted of the same, shall be liable to fine or imprisonment, or to both, at the discretion of the court. *Id. s.* 13.

Any offender who shall escape, break prison or be rescued in manner aforesaid, shall be tried before the justices of oyer and terminer or gaol delivery, either for the county where he or she shall be apprehended and re-taken, or for the county in which the said offence shall have been committed; and in case of any prosecution for any such escape, attempt to escape, breach of prison or rescue, either against the offender escaping or attempting to escape, or breaking prison, or being rescued, or against any other person or persons concerned therein, or aiding the same, a copy, properly attested, of the order of commitment to *Parkhurst* prison, shall, after proof made that the person then in question before the court is the same who was delivered with such order, be sufficient evidence to the court and jury that the person then in question was so ordered to such confinement; and the expenses of the said prosecution shall be paid by the county, riding, division, city, borough, liberty or place for which the court in which the offender was convicted shall have been holden. *Id. s.* 14.

Escaping from charitable institutions.] In case any young offender who shall be sentenced to transportation or imprisonment, shall be pardoned by Her Majesty upon condition of placing himself under the care of some charitable institution for the reception and reformation of young offenders, and shall accept such conditional pardon, and shall afterwards abscond from such institution, or wilfully neglect or refuse to abide by and conform to the rules thereof, any justice of the peace for the county, &c., wherein the said offender shall actually be at the time he shall so abscond or neglect or refuse as aforesaid, upon due proof thereof made before him upon the oath of one credible witness, may by warrant under his hand and seal commit the party to any gaol or house of correction for the said county, &c., with or without hard labour, for any period not exceeding three calendar months for the first offence, and not exceeding six calendar months for the second or any subsequent offence, in case the managers or directors of any such charitable institution shall be willing again to receive any such young offender, such imprisonment to be in addition to the

original sentence of such young offender; and after the expiration of the time of such additional punishment, if the managers or directors of any such charitable institution shall refuse to receive such offender, or if Her Majesty shall not pardon the breach of the condition on which the former pardon was granted, the said party shall forfeit all benefit of the said pardon, and shall be remitted to the original sentence, and shall undergo the residue thereof, as if no such pardon had been granted. *Id. s.* 11.

GIRL.

See "Abduction," "Carnally Knowing Female Children."

GLASS.

See "Larceny," "Manufactures."

GRAIN.

See "Burning."

GRANARY,

See "Burning," "Malicious Injuries."

GUNPOWDER.

The regulations made to prevent, as much as possible, any accidents from gunpowder, and to render these accidents, when they do occur, as little injurious as previous precautions can make them, are comprised in stat. 12 G. 3, c. 61, by which, however, it is provided (*sect.* 29,) that nothing in the Act shall be deemed to extend to mills or other buildings erected for making gunpowder in any lands of the crown, or to the keeping of gunpowder at any of Her Majesty's storehouses or magazines, or at the magazines at Barking, Creeksmouth, Erith Level, or at the magazines near Liverpool or Bristol, or to the carriage of gunpowder to or from the King's magazines under

an order from the board of ordnance, or to the carriage of gunpowder with forces on their march, or which shall be sent for the use of the forces. Nor shall the Act extend to the powder mills erected in the parishes of Battle, Crowhurst, Seddlescomb and Brede, in the county of Sussex, as far as relates to the making of the fine fowling gunpowder, known by the name of Battle powder. *Id. s.* 5. The regulations above alluded to, may be considered under the following heads:—

1. *Powder mills.*
2. *Having or carrying gunpowder in large quantities*, p. 597.
3. *Search for gunpowder*, p. 600.
4. *Prosecution for offences*, p. 600.

1. *Powder Mills.*

Where and in what cases.] No person shall use any mill or other engine for making gunpowder, in any place, except in mills and places where the manufacture of gunpowder is carried on at the commencement of this Act, or where it afterwards shall become lawful to carry on such manufacture by licence for that purpose as hereinafter directed, on pain of forfeiting all gunpowder manufactured otherwise, and 2*s.* for each pound thereof. *Id. s.* 1.

And the justices at sessions may grant such licence upon application, the party having previously given to the overseers of the parish fourteen days' notice of his intention to apply; *Id. s.* 13; or if they refuse it, they shall upon application state a case for the opinion of the court of Queen's Bench, together with the proofs offered for and against the application. *Id. s.* 14.

Conviction, as in ordinary cases:— *On* ——, *at* ——, *did use a certain mill there situate for the making of gunpowder, the said mill not being a mill or place wherein the manufacture of gunpowder was actually carried on at the time of the commencement of a certain Act of Parliament made and passed in the twelfth year of the reign of his late Majesty King George the Third, intituled "An Act to regulate the making, keeping, and carriage of Gunpowder within Great Britain, and to repeal the laws heretofore made for any of those purposes," nor wherein it hath since become lawful to carry on such manufacture by licence for that purpose obtained: against the form of the statute in such case made and provided,* [&c. as in the form of conviction *ante*, p. 372, to the words], *we do hereby convict him of the offence aforesaid, and do declare and adjudge that he the said C. D. hath forfeited for the offence aforesaid —— pounds weight of gunpowder in the said mill by him manufactured, and that he the said C. D. hath also forfeited the sum of ——, being two*

shillings for every pound weight of the said —— pounds weight of gunpowder, to be distributed according to the form, &c.

How and in what quantities manufactured.] No person shall, for the making of gunpowder, use any mill or engine worked with a pestle, commonly called a pestle mill, on pain of forfeiting all gunpowder manufactured therein, and two shillings for each pound thereof. *Id. s.* 2.

No person shall, in any mill or engine, make at one time, under any single pair of millstones, any quantity of gunpowder or materials to be made into gunpowder, exceeding 40lbs., on pain of forfeiting all above 40lbs., and two shillings for each pound. *Id. s.* 3.

No person shall dry, in any one store or place used for the drying of gunpowder, any quantity exceeding 40lbs. on pain of forfeiting all above that weight, and two shillings for each pound. *Id. s.* 6.

No person shall keep in any corning house, drying house, dusting house, or other place used in making gunpowder, or in any building adjoining or belonging thereto, (except magazines or storehouses constructed with stone or brick, and situated fifty yards at least from the gunpowder mill,) any greater quantity of gunpowder than shall be necessary for the immediate work then carrying on in such house or place, on pain of forfeiting all the gunpowder above such necessary quantity, and two shillings for each pound. *Id. s.* 7.

Convictions on these sections as in ordinary cases:—*On ——, at ——, for the making of gunpowder there, did unlawfully use a certain mill, then and there worked with a pestle, and commonly called a pestle mill,* [or as the offence may be] ; *against the form*, &c. as in the last form.

Manufacturers to have magazines.] Every person keeping or using any mill or engine for making gunpowder, shall, besides the magazines or storehouses near his mills, have a good and sufficient magazine remote from his mill, for the purpose of receiving and safe keeping all the gunpowder made at such mill, as soon as the same can conveniently be removed thereto, (which last mentioned magazine shall be built with brick or stone near the river Thames and below Blackwall, or in some other place, to be licensed by the justices as hereinafter mentioned): on pain of forfeiting 25*l.* for every month during which he shall make gunpowder without having such magazine, and 5*l.* for every day during which he (not being hindered by stress of weather or other just impediment) shall wilfully neglect or delay removing with due diligence the gunpowder made at such mill from thence, or from the magazine or storehouse adjoining thereto, to the magazine to be situate remote from the mill. *Id. s.* 8.

And the justices at sessions may grant such licence to have magazines for keeping unlimited quantities of gunpowder, in places where there are no mills, not being within London or Westminster, or certain other limits mentioned in the Act; *Id. s.* 13, *and see s.* 16; or if they refuse it, they shall upon application, state a case for the opinion of the court of Queen's Bench, together with the proofs offered for or against the application. *Id. s.* 14.

The conviction in this case may readily be framed from the form, *ante*, p. 595.

Charcoal, where to be kept.] Every maker of gunpowder, who shall keep or permit to be kept any charcoal within twenty yards of any mill or other engine for making gunpowder, or of any drying, corning, or dusting house, or magazine or storehouse thereunto belonging, shall forfeit 5*l.* for every week during which it shall be so kept. *Id. s.* 10.

2. *Having or carrying Gunpowder in large quantities.*

Dealers or others having more than a certain quantity.] No person being a dealer in gunpowder, shall keep at any one time more than 200lbs. weight of gunpowder, or not being a dealer, more than 50lbs., in any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf, or other building or place occupied by him (all buildings or places adjoining each other being deemed one house within the Act), or on any river, or other water, (except in ships, boats, or vessels loading or unloading, or passing on any river or other water, or detained there by the tide or bad weather,) within the cities of London or Westminster, or within three miles thereof; or within any other city, borough, or market town, or one mile thereof, or within two miles of any palace or house of residence of the King, or any of the King's gunpowder magazines; or within half a mile of any parish church, or in any other part of Great Britain, except in mills or other places at the commencement of this Act used for the making of gunpowder, and in the places where it shall be lawful to make gunpowder, or to keep greater or unlimited quantities of gunpowder by force of this Act: on pain of forfeiting all beyond the quantity hereby allowed to be kept, and the barrels in which the same shall be, and also two shillings for every pound beyond such allowed quantity. *Id. s.* 11.

The conviction may readily be framed from the form *ante*, p. 595. *See R.* v. *Matters*, 1 *B.* & *A.* 362.

It is provided, however, that 300lbs. weight may be kept in a magazine or warehouse, for the use of any mine or colliery, so as the same be within 200 yards of such mine or colliery, and not within any of the limits above mentioned. *Id. s.* 12.

Carrying more than a certain quantity.] No person shall carry at any one time more than 25 barrels of gunpowder in any waggon, cart, or other carriage by land; or more than 200 barrels in any barge, boat, or other vessel by water, except in vessels with gunpowder imported from, or to be exported to any place, or going coastwise; and the barrels in which it shall be carried shall be close jointed and hooped, without any iron about them, and so secured that no part of the gunpowder be scattered in the passage; and each barrel shall contain no more than 100lbs. of gunpowder: and, when conveyed by land, shall be entirely closed in a leather bag, or a bag commonly called a saltpetre bag; and every carriage in which gunpowder shall be conveyed by land, shall have a complete covering of wood, painted cloth, tarpaulin, or wadmill tilts over all the gunpowder therein contained; also no gunpowder shall be conveyed in any barge, boat, or other vessel by water (except in vessels for importation or exportation, or going coastwise as aforesaid) that hath not a close deck; and as soon as any gunpowder is put on board such vessel, all such gunpowder shall be covered with raw hides or tarpaulins; and all gunpowder carried in greater quantity or in other manner than is hereinbefore prescribed, and the barrels in which such gunpowder shall be, may be seized by any person, who shall have the same authority to remove such gunpowder and barrels, and for that purpose to use during the space of twenty-four hours after seizure, the carriage or vessel in which such gunpowder shall be seized, and the tackling, beasts, and accoutrements belonging thereto, on paying a recompense for the use thereof, and to detain the same, as is hereinafter given to persons searching under a justice's warrant; and such seizure shall be for his own use, on conviction of the offender. *Id. s.* 18. It is provided, however, that the statute shall not extend to hinder any person from carrying an unlimited quantity of gunpowder in such close decked vessel, and in such manner as above directed, from any vessel lying below Blackwall, or from any such magazines below Blackwall, and going to any place beyond sea or coastwise. *Id. s.* 30.

The conviction as in ordinary cases:—*On* ——, *at* ——, *did unlawfully carry more than* 25 *barrels of gunpowder, to wit,* 30 *barrels of gunpowder, in one waggon at the same time, by land, against the form of the statute in such case made and provided, and the same, together with the barrels in which it was contained, was then and there seized by the said A. B.: Whereupon the said C. D.* [&c., here state the defendant's appearance, and the evidence, &c., as *ante*, p. 595, to the words]: *We do hereby convict him of the offence aforesaid, and do declare and adjudge that the said C. D. hath forfeited for the offence aforesaid the gunpowder aforesaid, amounting to —— pounds weight, together*

with the barrels in which the same was and is contained, to be applied to the use of the said A. B., according to the form of the statute in such case made and provided. Given under our hands and seals, &c.

Loading gunpowder, or bringing it for the purpose of loading, on board of any barge, boat or vessel, before any stale, condemned or returned gunpowder on board shall have been unloaden and carried away, is also punishable by forfeiture of the gunpowder so brought. *Id. s.* 19.

Delay in loading, unloading or carrying gunpowder.] If any person having the care of any carriage used for the conveyance of gunpowder by land, shall, after beginning to load therein any quantity, or beginning to unload the same thereout, stop or stay at any place of loading, or in the loading or unloading suffer any longer time to pass than shall be reasonably necessary for that purpose;—or if any person, having the care of any vessel used for the conveyance of gunpowder by water (except ships for importation, exportation, or going coastwise as aforesaid), shall, after beginning to load or unload any quantity of gunpowder, stop or stay at any wharf, key, or other place of loading, or in the loading or unloading thereof suffer any longer time to pass than shall be reasonably necessary for that purpose (not exceeding eighteen hours, unless hindered by the weather):—he shall forfeit 10*l.* *Id. s.* 21. The statute, however, extends only to such carriages or vessels as carry more than 1 cwt. of gunpowder. *Id. s.* 22.

The conviction in this case may readily be framed from the form, *ante*, p. 595.

Having fire, &c. on board.] If any person, having the care or management of any barge, boat or other vessel (except ships for importation, exportation, or going coastwise as aforesaid), loaded with gunpowder, or if any other person on board the same, shall bring, have, or use, or permit, &c., any charcoal or other combustible matter, or any fire or lighted candle, or shall smoke or wittingly permit any person to smoke, on board the same, he shall forfeit 5*l.* *Id. s.* 20.

The conviction in this case may readily be framed from the form, *ante*, p. 595.

Having gunpowder in vessels on the Thames.] No master of any vessel in the Thames outward bound shall receive on board more than 25lbs. of gunpowder (except for the King's service) before the arrival of such vessel at or below Blackwall; and the master of every vessel coming into the Thames shall (except in case of the King's service) put on shore, in proper places, all the gunpowder on board above 25lbs., either before the arrival of such vessel at Blackwall, or within twenty-four hours (if

the weather will permit), and shall not afterwards have on board more than 25lbs. (except for the King's service), on pain of forfeiting all the gunpowder found on board above 25lbs., and the barrels containing the same, and also 2*s.* for every pound above the quantity of 25lbs. *Id. s.* 24. The Trinity House may appoint searchers, for the purpose of searching for such gunpowder, who shall have the same powers, &c. as persons searching under a justice's warrant. *Id. s.* 25.

The conviction may readily be framed from the form, *ante*, p. 595.

3. *Search for Gunpowder.*

Any justice of the peace, on demand made, and reasonable cause assigned upon oath, may issue his warrant for searching in the day time any house, mill, magazine, storehouse, warehouse, shop, cellar, yard, wharf or other place, or any carriage, ship, boat, or vessel in which such gunpowder is suspected to be made, kept, or carried contrary to this Act; and all gunpowder found on such search to be made, kept or carried contrary to this Act, and also the barrels, shall be immediately seized by the searcher, who shall with all convenient speed remove the same to such proper place as he shall think fit; and in case of gunpowder seized in any carriage or vessel, may use, for the purpose of removal, during the space of twenty-four hours after seizure, such carriage or vessel, with the tackling, beasts, and accoutrements belonging thereto, (paying afterwards to the owner a sufficient recompense for the use thereof, to be settled by the justices before whom the complaint shall be heard), and may detain such gunpowder and barrels, until it shall be adjudged, on hearing before two such justices, whether the same shall be forfeited. *Id. s.* 23.

4. *Prosecution for Offences.*

All penalties under this Act shall be recoverable before two justices, and be distributed, half to the King—half to the informer. *Id. s.* 26.

The prosecution shall be commenced within fourteen days after the seizure of the gunpowder, or after the commission of the offence, in cases where there shall be no seizure. *Id. s.* 27.

Where the penalty is pecuniary, it shall be levied by distress and sale; and for want of sufficient distress, the offender shall be committed to the house of correction, there to be imprisoned and kept to hard labour for not more than six months, nor less than three. *Id. s.* 26.

GYPSIES.

See "Vagrant."

HACKNEY COACHES.

The regulations upon the subject of hackney coaches, &c., being confined to the metropolis and its vicinity, by stat. 1 & 2 Vict. c. 79, and to the several provincial cities and towns throughout England by certain local Acts upon the subject, none of which relate to such carriages generally, it is not thought necessary to treat of the subject in this work; magistrates, no doubt, are furnished with the local Acts upon the subject, in force within their respective districts.

HATS.

See "Manufactures."

HAWKERS AND PEDLARS.

1. *Hawker's licence.*
2. *How and in what articles they may trade,* p. 604.
3. *Trading without or contrary to licence, &c.* p. 606.
4. *Recovery of penalties,* p. 609.

1. *Hawker's Licence.*

Duty payable.] Every "hawker, pedlar, petty chapman, and every other trading person and persons, going from town to town, or to other men's houses, and travelling either on foot, or with horse, horses, or otherwise, in England, Wales, or the town of Berwick-upon-Tweed, carrying to sell, or exposing to sale any goods, wares, or merchandize," shall pay a duty of four pounds for each year; and every person so travelling with a horse, ass, or mule, or other beast bearing or drawing burthen, the sum of four pounds yearly for each beast he or she shall so travel with, over and above the said first-mentioned duty of four pounds. 50 *G.* 3, *c.* 41, *s.* 6.

The words here "going from town to town," &c. override all the preceding words, and have reference as well to the "hawker, pedlar, petty chapman," as to "every other trading person and persons;" they form part of the description of all the persons here named, as liable to the duty; and therefore a conviction for hawking goods without a licence, merely describing the party as a hawker, pedlar, or petty chapman, would be insufficient, if it did not also describe him as going from town to town, or to other men's houses, &c. as in the Act. *R.* v. *Little*, 1 *Burr.* 609. Sending goods to a town, and there taking rooms for the purpose of selling them or exposing them to sale, and selling them either by private sale or public auction, will render it necessary for the party to have a licence within the meaning of this Act, whether the quantity sent be small or great, *Dean* v. *King*, 4 *B.* & *A.* 517, whether he accompany them, or go by another conveyance, *Id.*, whether he go from his place of residence to several other towns or to one only, *Att.-Gen.* v. *Tongue*, 12 *Price*, 51, or upon several occasions or upon one only, *Att.-Gen.* v. *Woolhouse*, 1 *Young* & *J.*, 463, whether he himself sell them, or (he being there) he employ another to do so, *Id.*, or whether he sell them on his own account, or on commission as the agent or auctioneer for others. *R.* v. *Turner*, 4 *B.* & *A.* 510. But merely taking samples of an article to different persons, obtaining their orders, and then delivering to them the articles ordered, has been holden not to be within the Act; it is not a "carrying to sell or exposing to sale" within the meaning of the above clause of the statute. *R.* v. *M'Knight*, 10 *B.* & *C.* 734.

This duty is now payable to the commissioners of stamps, and is deemed a stamp duty. 1 & 2 *W.* 4, *c.* 22, *s.* 75, *and see s.* 76.

Exceptions.] "Nothing herein contained shall extend or be construed to extend to hinder any person or persons from selling or exposing to sale any sorts of goods or merchandize in any public mart, market, or fair, legally established within the kingdom of England, dominion of Wales, and town of Berwick-upon-Tweed; but such person or persons may do therein, as they lawfully might have done before the making of this Act." 50 *G.* 3, *c.* 41, *s.* 5.

Also, "nothing in this Act shall extend to prohibit any person or persons from selling any printed papers licensed by authority;—or any fish, fruit, or victuals;—nor to hinder the real worker or workers, or maker or makers of any goods, wares, manufactures of Great Britain, or his, her, or their children, apprentices, or known agents or servants, usually residing with such real workers or makers only, from carrying abroad or exposing to sale, and selling by retail or otherwise, any of the said goods, wares, or manufactures of his, her, or

their own making, in any mart, market, or fair, and in every city, borough, town corporate, and market town;—nor any tinkers, coopers, glaziers, plumbers, harness menders, or other persons usually trading in mending kettles, tubs, household goods, or harness whatsoever, from going about and carrying with him or them proper materials for mending the same." *Id. s.* 23.

Barm or yeast, has been holden to be victuals, within the meaning of that word in this section. *R.* v. *Hodgkinson*, 10 *B.* & *C.* 74. Also the words here "worker" and "maker," comprehend, not only those who make the articles themselves, but those in whose manufactories they are made, by persons in their employment. *R.* v. *Farraday*, 1 *B.* & *Ad.* 275. A known agent or servant, to come within the section, must be such as usually resides with, and forms part of the family of, the master manufacturer of the goods sold; one residing with his own family, in a different house, has been holden not to come within the meaning of this clause. *R.* v. *Mainwaring*, 10 *B.* & *C.* 66. But although he do not come within this description, still if his master or one of his masters be present at the sale, and he sell merely under his directions and authority, it will then be the sale of the master; and if the master be the worker or maker of the goods, within the meaning of this section, the servant will not require a hawker's licence. *R.* v. *Farraday*, *supra*. The worker or maker, and his servant, &c. are privileged, however, by this section, only when they sell, &c. in a mart, market or fair, or in a city, borough, town corporate, or market town. *R.* v. *Websdell*, 2 *B.* & *C.* 136.

Also by stat. 52 G. 3, c. 108, s. 1, wholesale traders in lace, or in woollen, linen, silk, cotton or mixed goods, or any of the goods, wares or manufactures of Great Britain, and selling the same by wholesale, shall not be deemed to be a hawker, pedlar or petty chapman, within the meaning of stat. 50 G. 3, c. 41. *Id. s.* 1. Nor shall stat. 50 G. 3, c. 41, extend to prevent persons from selling coals, by retail, in carts or on horses, mules or asses, or subject them to any duty. *Id. s.* 2.

Certificate to obtain licence.] Before any person shall receive any licence to trade or travel as aforesaid, he shall produce a certificate, signed by some one clergyman officiating within the parish, chapelry, or place wherein such person so applying for such licence has his usual residence, and also by two reputable inhabitants of the said parish, chapelry, or place, attesting that the person so applying is of good character and reputation, and is a fit person to be licensed to exercise the trade of a hawker, pedlar, and petty chapman. 50 *G.* 3, *c.* 41, *s.* 12.

And the certificate so to be produced, shall be in the form or to the effect following:—*s.* 13.

We, A. B. the minister, and C. D. and E. F. being two householders, residing at ——, *in the parish,* [*chapelry,* or otherwise, as the case may be], *of* —— *in the county of* ——, *do hereby certify that G. H. hath been known to us for the space of* —— *years last past, and during all that time hath usually resided in the said parish* [*chapelry,* or otherwise, as the case may be], *of* ——, *and is a person of good character and reputation, and is a fit person to be licensed to exercise the trade of hawker, pedlar, and petty chapman. Dated the* —— *day of* ——.

A. B. Minister.
C. D. } *Householders.*
E. F. }

Licence to be taken out annually.] Every hawker, pedlar, and petty chapman, subject to the duty hereby imposed, shall annually take out a licence in the manner hereinafter mentioned, which licence shall continue in force until the 1st day of August, next following the date thereof. *Id. ss.* 9 & 2.

2. *How, and in what Articles they may trade.*

Their packages, &c. how marked.] "Every person, to whom any such licence as aforesaid shall be granted under or by virtue of this Act, and who shall trade with or under colour of such licence, shall cause to be written, painted, or printed, in large legible Roman capitals, upon the most conspicuous part of every pack, box, bag, trunk, case, cart or waggon, or other vehicle or conveyance in which he or she shall carry his or her goods, wares, and merchandize, and of every room and shop in which he or she shall so trade, and likewise upon every hand-bill or advertisement which he or she shall give out, distribute, or publish, the words 'licensed hawker,' together with the number, name, or other mark or marks of distinction so written or printed upon his or her licence as aforesaid; and that every such person in any respect making default herein, shall forfeit for every offence the sum of ten pounds." *Id. s.* 14.

Conviction:—*That E. F. of* ——, *in the said county of* ——, *on* —— *at* ——, *being then and there a person to whom was granted a licence to travel and trade as a hawker, pedlar, and petty chapman under and by virtue of the statute in such case made and provided, and who then and there did so trade with and under colour of such licence, did not cause to be written, painted, or printed upon a certain pack, in which he then and there carried his goods, wares, and merchandize, the words "Licensed Hawker"* [or as the case may be] *but therein, then and there, and whilst he was so licensed as aforesaid, made default; against the form of the statute in such case made and*

provided. Whereupon the said E. F., &c., as in the form *post*, p. 610.

And if "any person, other than to whom such licence shall have been so granted as aforesaid, shall write, paint, or print, or cause to be written, painted, or printed, or keep or continue written, painted, or printed upon any pack, bag, box, trunk, case, cart, waggon, or other vehicle or conveyance for any goods, wares, or merchandize, or in any room or shop in which he or she shall sell or expose to sale, or keep for sale, any goods, wares, or merchandize, the words 'Licensed Hawker' or 'Licensed Pedlar,' or any other word or words to that effect: every person so offending herein, shall forfeit for each offence the sum of ten pounds." *Id. s.* 15.

Conviction:—*That E. F. of* ——, *on* —— *at* ——, *not being then and there a person to whom was granted a licence to travel and trade as a hawker, pedlar, or petty chapman, under or by virtue of the statute in such case made and provided, did unlawfully cause to be painted on a certain pack of him the said E. F., for certain of his goods, wares, and merchandize, the words "Licensed Hawker;" against the form of the statute in such case made and provided. Whereupon the said E. F.*, &c.

Not to deal in smuggled or stolen goods.] If any hawker, pedlar, petty chapman, or other trading person as aforesaid, shall be convicted of knowingly dealing in, vending, or selling any kind of smuggled, contraband, or prohibited goods, wares, or merchandize, or knowingly dealing in, vending, or selling any goods, wares, or merchandize fraudulently or dishonestly procured, either by themselves or through the medium of others, with their privity and knowledge: every such hawker, pedlar, petty chapman or trading person shall, from and after such conviction, forfeit his licence, and for ever thereafter be incapable of obtaining or holding any new licence, or dealing, trafficking, or trading under the same; and that, over and above all such forfeitures and incapacities, fines and penalties, to which he or she is or shall be by law subject and liable, for such illicit and illegal trafficking and dealing. *Id. s.* 16.

Not to deal in spirits.] He is prohibited also by the excise laws (6 *G.* 4, *c.* 80, *s.* 138), under the penalty of 100*l.*, from selling or exposing to sale any spirits, by whatever name they may be called.

Shall not sell by auction, unless in the place where he resides.] And it shall not be lawful for any hawker, pedlar, petty chapman, or any other trading person going from town to town, or to other men's houses, and travelling either on foot or with horse or horses, either by opening a room or shop, and exposing to sale any goods, wares, or merchandize by retail in any

town, parish, or place, such person not being a householder there, or the same not being an usual place of his or her abode, or by any other means or device, to vend or sell either by himself or herself, or by any auctioneer (whether licensed or not), broker, appraiser, agent, servant, or other person on his or her behalf, any goods, wares, or merchandize whatsoever, by outcry, knocking down of hammer, candle, lot, parcel, or any other mode of sale at auction, or whereby the best or highest bidder is or shall be deemed to be the purchaser; and that every person or persons so vending or selling contrary to such prohibition as last aforesaid, shall forfeit and pay for every offence the sum of 50*l.*, to be recovered and applied as hereinafter mentioned. 50 *G.* 3, *c.* 41, *s.* 7. *See sects.* 24, 25, 26, *post*, p. 609, 610. This does not prevent a licensed hawker, from selling in a room or shop, &c. in a place where he is not resident, provided he do not sell by auction or outcry, &c. *Allen* v. *Sparkhall*, 1 *B.* & *A.* 100.

3. *Trading without or contrary to Licence, &c.*

Trading without or contrary to licence.] If any such hawker, pedlar, or petty chapman, or other trading person so travelling as aforesaid, shall trade as aforesaid without or contrary to, or otherwise than as shall be allowed by, such licence, such person shall for each and every such offence forfeit the sum of 10*l.* *Id. s.* 17.

Conviction:—*That E. F., of* ——, *on* —— *at* ——, *being then and there a hawker, pedlar and petty chapman, and then and there travelling on* [*foot*], *and going from town to town* [or *to other men's houses*], *did then and there trade as such hawker, pedlar or petty chapman, and did then and there carry to sell and expose to sale divers goods, wares, and merchandize, without any licence, to him before then granted in that behalf; against the form of the statute in such case made and provided. Whereupon the said E. F.*, &c. *See R.* v. *Websdell*, 2 *B.* & *C.* 136; *R.* v. *Mc Gill*, *Id.* 142. If the conviction state an actual sale, it should describe the article sold, as in larceny. *See R.* v. *Selway*, 2 *Chit. Rep.* 522. If it be for doing any act contrary to the licence, it will be prudent that the statement of the offence shall be special, setting out the substance of the licence, and the act done, &c.

Not showing licence when demanded.] And if any person acting under or by virtue of any licence to him or her granted as aforesaid,—upon demand made by any person or persons authorized or appointed to demand any such licence by the commissioners for licensing hawkers, pedlars, and petty chapmen for the time being, or any two of them, under their hands

and seals, and upon producing or showing such authority or appointment to such person so trading as last aforesaid, or upon demand made by any justice of the peace, mayor, constable, or other officer of the peace of any county, riding, division, town corporate, borough, or place where he or she shall so trade,—or by any officer of the customs or excise,—or by any person to whom such hawker, pedlar, or petty chapman shall offer any goods to sale,—shall refuse to produce and show his or her licence for so trading as aforesaid, or shall not have his or her licence ready to produce and show unto such person authorized or appointed as last aforesaid, or unto such justice of the peace, mayor, constable, or other officer of the customs or excise: that then the person so refusing, or not having his or her licence ready to produce and show as aforesaid, shall forfeit 10*l.*, to be recovered and applied as hereinafter mentioned; and for non-payment thereof, shall suffer as a common vagrant, and be committed to the house of correction. *Id. s.* 17, *See post, tit.* "*Vagrant.*"

Conviction:—*That E. F. of* ——, *on* —— *at* ——, *being a person then and there trading as a hawker, pedlar, and petty chapman under and by virtue of a licence before then duly granted to him in that behalf, did not then and there produce and show his said licence to the said A. B., upon demand being then and there made by the said A. B. to the said E. F., that he the said E. F. should produce and show the same to him the said A. B.,* (*he the said A. B. being then and there a*) *constable and peace officer,* or *a person to whom the said E. F. did then and there offer goods for sale* [or as the case may be], *but the said E. F. then and there unlawfully refused to produce or show the same to him the said A. B.; against the form of the statute in such case made and provided. Whereupon the said E. F.,* &c.

Offenders to be apprehended, &c.] It shall be lawful for any person whatsoever to seize and detain any such hawker, pedlar, petty chapman, or other trading person as aforesaid, (who shall be found trading without a licence, contrary to this Act, or who being found trading shall refuse or neglect to produce to such person a licence according to this Act, after being required so to do,) for a reasonable time, in order to give notice to a constable, headborough, tithingman, or other peace officer or officers, who are hereby required to carry such person so seized, (unless he shall in the meantime produce his licence,) before some one of his Majesty's justices of the peace of the county or place where such offence or offences shall be committed; which said justice of the peace is hereby authorized and strictly required to examine into the fact or facts charged; and upon the proof, either by confession of the party offending, or by the oath of one or more credible witness or witnesses (which the said justice is hereby empowered to administer), that the person so brought before him had so traded as afore-

said, and no such licence being produced by such offender before the said justice, to convict the offender so trading without a licence; and thereupon it shall be lawful for such justice, and he is hereby required, by warrant under his hand and seal, to cause the said sum of 40*l.* to be levied by distress and sale of the goods, wares, or merchandize of such offender or offenders, or of the goods of which such offender or offenders shall be found trading with as aforesaid, rendering the overplus to the owner or owners thereof, after deducting the reasonable charges for making such distress, and out of the said sale to pay the said respective penalties and forfeitures aforesaid, and in the meantime to commit such offender to the common gaol or house of correction for the county, riding, division, city, liberty, town, or place where the said offence shall be committed, there to remain until the said penalties, and forfeitures, and the reasonable charges of taking the said distress, shall be levied by such distress and sale as aforesaid, or until the same shall be otherwise paid or satisfied by such offender. *Id. s.* 20. The word "forty" is here used by mistake for ten, ten pounds being the penalty assigned for the offence by the 17th section. *See R.* v. *Websdell*, 2 *B.* & *C.* 136. *R.* v. *Mc Gill*, *Id.* 142.

And if any constable, headborough, tithingman, or other officer or officers of the peace, shall refuse or neglect, upon due notice, or on his or their own view, to be aiding and assisting in the execution of this Act, being thereunto required, and each and every such officer or officers being thereof convicted, upon his confession, or by the oath of one or more credible witness or witnesses, before any justice of the peace for the county or place where the offence shall be committed, shall forfeit for each and every such offence the sum of 10*l.* to be recovered and applied as hereinafter mentioned. *Id. s.* 21.

Hiring or lending a licence.] In case any person shall let out or hire or lend any licence to him or her granted as aforesaid, or shall trade with or under colour of any licence granted unto any person whatsoever, or of any licence in which his or her own real name shall not be inserted as the name of the person to whom the same is granted, the person letting out to hire or lending any such licence, and the person so trading with or under colour of any licence granted to any other person, or any licence in which his or her own real name shall not be inserted as the name of the person to whom the same is granted, shall each of them forfeit the sum of forty pounds, to be recovered and applied as hereinafter mentioned; and in case any person shall be convicted or have judgment against him or her for lending his or her licence to any other person contrary to this Act, such his or her licence shall be from henceforth forfeited and void, and he or she shall be utterly incapable of having any licence again granted to him or her to trade as aforesaid; provided always, that nothing herein contained shall subject to the

said penalty any servant travelling for a licensed master, with the licence of such master, and for his benefit, or any licensed master sending such person to travel with such licence. *Id. s.* 19. *See sect.* 24, *infra*. *And see Hodgson* v. *Flower*, 2 *Camp.* 290.

Forging licences.] If any person shall forge or counterfeit any licence by this Act directed to be granted, or travel with or produce or show any such forged or counterfeited licence for any of the purposes aforesaid, every such person shall for every such offence forfeit the sum of three hundred pounds, to be recovered and applied as hereinafter directed. *Id. s.* 18.

4. *Recovery of Penalties, &c.*

Penalty, how recovered.] Any penalty exceeding twenty pounds, must be sued for by action of debt; and half thereof shall go to the crown, half to the informer. *Id. s.* 24.

But "in all cases where the pecuniary penalty by this Act imposed does not exceed the sum of twenty pounds, it shall be recoverable before one of his Majesty's justices of the peace of the county, riding, shire, division, city, liberty, town or place wherein the offence shall be committed, on proof of the offence, either by voluntary confession of the party or parties accused, or by the oath of one or more credible witness or witnesses; and one moiety of every such last-mentioned penalty shall belong to his Majesty, his heirs and successors, and the other moiety to the informer or informers prosecuting for the same; and in case of non-payment, the said justice, by warrant under his hand and seal, shall cause the same to be levied by distress and sale of the offender's goods and chattels, or of the goods and chattels with which such offender shall be found trading, and the overplus of the money raised, after deducting the penalty and expense of the distress and sale, shall be rendered to the owner;—and shall also commit the offender to the prison of such county, shire, division, city, liberty, town, or place, there to remain until the said penalties, and the reasonable charges of taking the said distress, shall be levied by such distress and sale as aforesaid, or until the same shall be paid or satisfied by such offender; and it shall be lawful for any such justice of the peace, by his warrant, to cause such offender to be apprehended and brought before him to answer to any charge or complaint for any such penalty, and to commit such offender to prison as aforesaid until the hearing of such charge or complaint, unless he or she shall and do enter into a recognizance before such justice, with two sufficient sureties, in a sufficient sum to be ordered by such justice, to appear at the hearing of such charge or complaint. *Id. s.* 25. Provided,

however, that no person committed to any gaol or house of correction, for any offence committed against this Act, shall be detained in such gaol or house of correction for any longer space of time than three months. *Id. s.* 26.

Form of conviction.] The conviction may be in the form or to the effect following, "without stating the evidence, and without alleging more than the substance of the offence." *Id. s.* 28.

Be it remembered, that on the —— day of —— in the year of our lord —— at —— in the county of —— A. B. came before me C. D., one of Her Majesty's justices of the peace for the said county, residing near the place where the offence hereinafter mentioned was committed, and informed me that E. F. of —— in the said county of —— [here set forth the fact for which the information is laid]; *whereupon the said E. F. being duly summoned to answer the said charge, appeared before me (and having heard the charge contained in the said information, acknowledged and voluntarily confessed the facts therein stated to be true) but in his* [or *her*] *defence alleged* [here setting forth the substance of the defence], *or voluntarily confessed the said charge to be true,* or *did not make any defence against the said charge, whereupon the same was fully proved on the oath of G. H. a credible witness,* or *said that he* [or *she*] *was not guilty of the said offence, whereupon the same was fully proved on the oath of G. H. a credible witness* [or as the case may be], or *did not appear before me pursuant to the said summons, but the said charge was fully proved on the oath of G. H. a credible witness* [or as the case may be]; *and therefore it manifestly appearing to me that the said E. F. is guilty of the offence charged in the said information, I do hereby convict him* [or *her*] *of the said offence, and do adjudge that he* [or *she*] *hath forfeited the sum of ——,* or *his* [or *her*] *licence, and the sum of ——, of lawful money of Great Britain to be distributed as the law directs, according to the form of the statute in such case made and provided. Given under my hand and seal the ——.*

No conviction upon this Act, shall be removed by writ of *certiorari* or otherwise, into his Majesty's court of King's Bench, or any other court, save upon an appeal as by this Act is directed. *Id. s.* 29.

Witnesses.] If any person shall be summoned as a witness to give evidence before any justice of the peace, touching any of the matters relative to this Act, and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such neglect or refusal, to be allowed by such justice or justices of the peace; or appearing, shall refuse to be examined upon oath and give evidence before such justice or justices of the peace before

whom the prosecution shall be depending: then every such person shall forfeit for every such offence the sum of ten pounds, to be recovered, levied, and paid in such manner and by such means as are herein directed as to the other penalties. *Id. s.* 32.

Queen's share of the penalty, to whom paid.] Every justice before whom any person shall be convicted of any offence under or by virtue of this Act, shall take and receive his Majesty's share of the penalty levied or paid under or by virtue of such conviction; and shall pay the same at the next general sessions of the peace after he shall have so taken or received the same, into the hands of the clerk of the peace or other such like officer for the county, riding, or place within which such conviction shall have been made, who is hereby directed to remit the same forthwith, without fee or reward, to the commissioners for licensing hawkers, pedlars, and petty chapmen, or to such person or persons as the greatest part of them shall appoint; and that every justice, his executors or administrators, shall, immediately on such payment made to any clerk of the peace or other such officer, transmit a like schedule to the said commissioners, or to such person or persons as they or the greater part of them shall appoint. *Id. s.* 30.

Appeal.] If any person shall find himself aggrieved by the judgment of any such justice, then he shall or may, upon entering into a recognizance, with two sufficient sureties, to be approved by such justice, to the amount of the value of such penalty and forfeiture, together with a sum which in the judgment of such justice shall be adequate to the amount of the costs which may be awarded, conditioned to pay the amount of such penalties, forfeitures, and costs as shall be adjudged in case such judgment shall be affirmed, appeal to the justices of the peace at the next general sessions of the county, riding, or place, who are hereby empowered to summon and examine witnesses upon oath, and finally to hear and determine the same, or, at their discretion, to state the facts especially for the determination of his Majesty's court of King's Bench thereon; and in case the judgment of such court shall be affirmed, it shall be lawful for such justices, or the court of King's Bench, to award the person to pay such costs occasioned by such appeal as to them shall seem meet. *Id. s.* 27.

Actions, &c.] If any person shall be sued, molested, or prosecuted for any thing by him or them done or executed in pursuance of this Act, he shall and may plead the general issue, and give the special matter in evidence for his defence; and if upon the trial a verdict shall pass for the defendant, or the plaintiff be nonsuited, or judgment be recovered against him

upon demurrer, or if the plaintiff shall discontinue his action, or be non-prossed, then such defendant shall have treble costs. *Id. s.* 94.

HEDGES.

See "Larceny," "Malicious Injuries."

HIGH SEAS.

See "Admiralty."

HIGHWAY.

What.] A highway is a way over certain land which the public freely use, and all persons have a right to use; for which reason it is usually called a public highway. It may be a carriageway, or a footway, or a foot and horseway, (which latter is also called a "pack and primeway," "a pack and driftway," or "bridleway,") and must be described accordingly in any proceedings for the non-repair of it; and therefore if an indictment for non-repair of a highway, state it to be a carriageway, and the evidence show an user by persons on foot and on horseback only, *R.* v. *St. Weonards*, 5 *Car.* & *P.* 579, or if the indictment state it to be a pack and primeway, and the evidence prove it to be a carriageway, *R.* v. *St. Weonards*, 6 *Car.* & *P.* 582, the variance will be fatal. It must lead from one town or vill to another, and be free for the passage of all Her Majesty's subjects. 1 *Hawk. c.* 76, *s.* 1. And therefore it has been holden that a way to a parish church, or to the common fields of a town, or to a private house, or perhaps to a village, which terminates there, and is for the benefit of the particular inhabitants of such parish, house or village only, may be called a private way, but not a highway. *Id.* So if it be not a thoroughfare, it is doubted very much whether it can be deemed a highway. *See Good* v. *Veal*, 5 *B.* & *A.* 454. But a public way, free and open to the public, and used by them, leading from one highway to another, is deemed a highway. As to the dedication of a way to the public, the manner in which it may be done, and the effect of it, these subjects will be found treated of, in a subsequent part of this title.

Statutes upon the subject.] Highways are either the ordinary

public parish roads, or turnpike roads. The general law as to turnpike roads, is comprised principally in stat. 3 G. 4, c. 126, and some enactments subsequently made, which shall be noticed hereafter in their proper place. As to the ordinary parish highways, all the statutes upon that subject were repealed by stat. 5 & 6 W. 4, c. 50, and the substance of them consolidated by and embodied in that Act, which is now the only one upon the subject. The different clauses of this statute, 5 & 6 W. 4, c. 50, shall be noticed under the following heads, together with the rules of the common law, now in force, with respect to highways generally. It may be necessary to premise, however, that this Act does not apply to the streets of the metropolis; 5 & 6 *W.* 4, *c.* 50, *s.* 112; nor to any turnpike roads, except where expressly mentioned; or to any roads, bridges, carriageways, cartways, horseways, bridleways, footways, causeways, churchways, or pavements, which now are or hereafter may be paved, repaired or cleansed, broken up or diverted, under any personal or local Act of Parliament; *Id. s.* 113; nor does it in any manner affect the rights of the universities, *Id. s.* 114, or the rights, &c., of the city of London, *Id. s.* 115, or the powers or authorities of the commissioners of sewers. *Id. s.* 116.

It is also necessary to observe, that by the interpretation clause of that Act (5 & 6 *W.* 4, *c.* 50, *s.* 5), the word—

Church, shall be understood to include chapel.

Division, shall be understood to include limit.

Highways, shall be understood to mean all roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways, and pavements.

Inhabitants, to include any person rated to the highway rate.

Justices, shall be understood to mean justices of the peace for the county, riding, division, shire, city, town, borough, liberty, or place in which the highway may be situate or in which the offence may be committed.

Owner, shall be understood to include occupier.

Parish, shall be construed to include parish, township, tithing, rape, vill, wapentake, division, city, borough, liberty, market town, franchise, hamlet, precinct, chapelry, or any other place or district maintaining its own highways; and wherever any thing in this Act is prescribed to be done by the inhabitants of any parish in vestry assembled, the same shall be construed to extend to any meeting of inhabitants contributing to the highway rates in places where there shall be no vestry meeting, provided the same notice shall have been given of the same meeting as would be required by law for the assembling of a meeting in vestry.

Petty session, or *petty sessions*, to mean the petty session or petty sessions held for the division or place.

Surveyor, shall be understood to mean surveyor of the highways, or waywarden.

Highway.

1. *Officers appointed for the repair, &c. of highways*, p. 614.
In single parishes, p. 614.
In large parishes, p. 615.
In districts, p. 617.
Duty of surveyors, p. 619.
Duty of collectors, p. 621.
2. *Special sessions for the highways*, p. 622.
3. *Highway rate*, p. 623.
4. *Repair of highways*, p. 625.
Liability to repair, p. 625.
Repairs, how compelled by the petty sessions, p. 633.
——— *by indictment*, p. 635.
Repairs, how made, p. 637.
5. *Widening highways*, p. 643.
6. *Stopping up or diverting highways*, p. 647.
7. *Nuisances to highways*, p. 652.
8. *Regulation as to waggons, drivers, &c.*, p. 658.
9. *Proceedings for penalties, &c.* p. 661.
Highway (*turnpike road*), see p. 668.

1. *Officers appointed for the repair, &c., of highways.*

In single Parishes.

Surveyors how elected.] The inhabitants of every parish maintaining its own highways, at their first meeting in vestry for the nomination of overseers of the poor in every year, shall proceed to the election of one or more persons to serve the office of surveyor in the said parish for the year then next ensuing; and in such case notice of such election shall be given by the chairman to the person elected and to the outgoing surveyor; provided always, that in any parish where there is no meeting in the year for the nomination of overseers of the poor, the inhabitants contributing to the highway rate shall meet at their usual place of public meeting upon the 25th of March or within fourteen days afterwards, in every year, to elect one or more persons to serve the office of surveyor for the said parish. *Id. s.* 6. As to the qualification of surveyors, see *sect.* 7.

And if any person so chosen and elected, shall refuse or neglect to take upon himself the office of surveyor, or to provide a sufficient deputy, to be approved of, he shall forfeit, on conviction before any two justices of the peace, any sum not

exceeding twenty pounds, unless he can show to the said justices good and sufficient cause why he should not be called upon to serve the said office. *Id. s.* 8.

Deputy surveyor.] Every deputy provided and approved of as above mentioned, shall have the same powers and authorities, and be subject to the discharge of the same duty, and be liable to the same penalties, as any surveyor appointed under the authority of this Act. *Id. s.* 8.

Surveyor, when appointed by the justices.] But if it shall appear on oath to the justices at a special sessions for the highways, that the inhabitants of any parish have neglected or refused to nominate and elect a surveyor, or that the outgoing surveyor (except he had been directed by the inhabitants so to do,) has delivered no statement of the name and residence of his successor, or that the surveyor is dead, or has ceased to possess the qualification, or is or has become disqualified in any manner herein mentioned, or that he has neglected to act, or refused to carry into operation the duties imposed upon him by this Act; it shall and may be lawful for such justices, and they are hereby authorized and required, by writing under their hands, at their next succeeding special sessions for the highways, to dismiss such surveyor so neglecting to act or refusing to carry into operation the duties imposed upon him by this Act, and to appoint any person whom they may think fit to be a surveyor for such parish till the annual meeting then next ensuing for the nomination of overseers or for the election of surveyors as aforesaid, and with or without such salary, as to the said justices shall seem fit and proper. *Id. s.* 11.

And when a parish is situated in more than one county, division, or liberty, the surveyor so to be appointed as last aforesaid shall be appointed by the justices at a special sessions for the highways assembled in that county, division, or liberty in which the church of the said parish shall be situate. *Id. s.* 12.

Collectors of rates.] The surveyor of any parish, by consent of the majority of the inhabitants in vestry, may appoint any number of collectors of the said rates, [taking security from them, *s.* 37,] and such collector shall have the same powers, remedies, and privileges for the levying and enforcing the payment of such rates, as the surveyor appointed under this Act. *Id. s.* 36.

Officers appointed in large Parishes.

Board for the repair of highways.] And whereas it is expedient in large and populous parishes, that the repairs of the highways should be under the direction and control of a cer-

tain number of inhabitants, to be chosen and appointed as a board for that purpose, with necessary powers; it is enacted, that in any parish [*see R.* v. *Bush*, 9 *Ad.* & *El.* 820, 8 *Law J.* 39, *m.*] where the population by the then last census, taken from the returns made to parliament, exceeds the number of five thousand, if it shall be determined by a majority of two-thirds of the votes of the vestrymen present at such meeting as aforesaid, to form a board for the superintendence of the highways of the said parish, and for the purpose of carrying the provisions of this Act into effect, the said vestry may nominate and elect any number of persons, not exceeding twenty nor less than five, being respectively householders and residing in and assessed to the rate for the relief of the poor of the said parish, and also liable to be rated to the repair of the highways in the said parish under and by virtue of this Act, to serve the office of surveyors of the highways for the year ensuing; and such persons so to be nominated and elected as such surveyors, or any three of them, shall and are hereby authorized to act as a board, and to be called "the board for repair of the highways in the parish of ——" (as the case may be), and to carry into effect the powers, authorities, and directions in this Act contained. *Id. s.* 18.

And upon such board being so nominated and elected, all the powers and authorities given and created by this Act, and granted to or vested in the vestry, and in any person as surveyor, shall, for the purposes of the parish so nominating and electing such board, be vested in the persons so elected, or any three of them acting as such board as aforesaid. *Id. s.* 18.

And such board may rent, or with the consent of the vestry of any parish may purchase, fit premises for the keeping of the implements and materials necessary for the reparation of the highways, and may direct how and in what manner the highways in the said parish shall be curbed or paved with stone or otherwise. *Id. s.* 19.

Surveyor and collector.] Such board may appoint a collector or any number of collectors of the rates, and also employ a person of skill and experience to act as an assistant surveyor to the said board, and also a clerk to attend the said board, and to keep the accounts and minutes of the proceedings thereof; such assistant surveyor and clerk to be paid such reasonable salaries out of the said rates as the said board shall determine. *Id. s.* 18.

Treasurer.] And such persons or any three of them, at a meeting to be convened for that purpose, may nominate and appoint a fit and proper person to be treasurer. *Id. s.* 18.

Board to account.] Upon the expiration of the year for which such board shall be elected, and before or on the day for

the nomination and election of persons as surveyors under the authority of this Act, the said board shall present to the vestry of the parish for which they shall have acted, copies of all their accounts, and also of the minutes of their proceedings during the preceding year. *Id. s.* 18.

Officers appointed in Districts.

Districts, and district surveyor.] And whereas it is expedient that in many cases parishes should be formed into districts, for the purpose of having one sufficient person to be the district surveyor, who should have the superintendence and management of the funds to be raised and levied under the provisions of this Act in each parish forming part of such district; it is enacted, that the inhabitants of any parish, in vestry assembled, if they shall think fit, may direct one of the churchwardens of such parish, or the chairman of the said vestry, to make application to the justices assembled at the quarter sessions for the county, or (where the parishes to be united shall be situated in the same division) at some special sessions for the division in which such parish shall be situate, for the purpose of being united with one or more parishes to form a district for the purposes aforesaid, and at the same time to nominate one fit and proper person, to be returned to the said justices, to be appointed as such district surveyor, together with the amount of the yearly salary which the said inhabitants in such vestry assembled shall agree to pay to such district surveyor. *Id. s.* 13.

And on such application being made by two or more parishes to the said justices, they are hereby authorized at the said quarter sessions, or at some special sessions as aforesaid, to take the same into their consideration, and to unite such and so many of the parishes so applying, as they shall think fit, into a district for the purposes of this Act; and the said justices shall select and appoint, out of the persons so nominated as aforesaid by the several parishes so united into one district, one fit and competent person to be the surveyor for such district, which appointment shall be in writing. *Id. s.* 14.

And the names of the parishes so united, and the name of the person so appointed as district surveyor, shall be reduced into writing, signed by the chairman of the said quarter sessions, or by the majority of the magistrates present at such special sessions, and shall be transmitted by him or them to the clerk of the peace, who shall lay the same before the justices assembled at the quarter sessions for the said county, who shall cause the same to be enrolled with the records of the court; and a copy thereof shall be sent by such clerk of the peace to each of the churchwardens or the surveyor of each of the said parishes so united. *Id. s.* 15.

And such parishes, so united, shall continue to form a district for the purposes of this Act, for three years then next following, and from thenceforward until the churchwarden of any one of the said parishes, or the chairman of the vestry, shall, by direction and in pursuance of a resolution of the inhabitants in vestry assembled, give twelve months' notice to the churchwardens and surveyor of each of the other parishes, and to the said district surveyor appointed by the said justices, and to the clerk of the peace of the county in which the said parishes are situate, of the intention of the said parish to cease to form a part of the said district; in which case, from and after the expiration of the said twelve months' notice, the union of the said parishes into such district as aforesaid, and the appointment of the said district surveyor, shall cease and determine so far as may concern or be binding on the said parish so giving such notice as aforesaid. *Id. s.* 15.

District surveyor, his power, salary, &c.] And such district surveyor, when so appointed, shall for all the purposes of this Act, except the making, assessing, and levying the rate in and by this Act authorized, have, as far as the same are applicable, the same powers, and be subject and liable to the same duties, penalties, and forfeitures, as any surveyor elected under the provisions of this Act is invested with and liable to, and shall have the laying out and application of all the funds raised and levied under the authority of this Act; but such district surveyor shall not expend any monies levied in any one of the said united parishes except for the use and benefit of the parish in which it is so levied, unless with the consent of the inhabitants of such parish in vestry assembled, for the purpose of carrying on repairs or beneficial improvements under the provisions of this Act for the common benefit of the said united parishes; and such district surveyor shall annually receive from each of the parishes such salary as shall have been agreed upon by the several parishes in manner aforesaid, which salary shall be paid to such district surveyor by the surveyor of the highways, out of the money raised in each of such parishes under the authority of this Act; and in case of non-payment thereof, the same shall be recoverable from the surveyors of the highways of such parishes, to and for his own use, in the same manner as any forfeiture is recoverable under this Act. *Id. s.* 16.

Parish surveyor, and his duty.] And in each of the parishes so united into a district, a surveyor shall be elected, in addition to the district surveyor; but such surveyor shall only make, assess, and levy the rate herein directed, and from time to time pay over the money arising therefrom to such district surveyor. *Id. s.* 17.

Duty of Surveyors.

To repair the highways.] The surveyor shall repair and keep in repair the several highways in the said parish for which he is appointed, and which are now or hereafter may become liable to be repaired by the said parish. *Id. s.* 6.

To erect direction posts, &c.] The surveyor of every parish, shall, with the consent of the inhabitants in vestry, or by the direction of the justices at a special sessions for the highways, cause direction posts to be erected, as well as stones or posts to mark the boundaries of the highway, containing the name of the parish wherein situate; and such surveyor of every parish shall, at the several approaches to such parts of any highways as are subject to deep or dangerous floods, cause to be erected graduated stones or posts, for the guiding of travellers in the best and safest track through the floods; and also to secure horse causeways and foot causeways, by posts, blocks, or stones fixed in the ground, or by banks of earth cast up, or otherwise, from being passed over and spoiled by waggons, wains, carts, or carriages. *Id. s.* 24.

To remove snow, &c.] If any impediment or obstruction shall arise in any highways from accumulation of snow, or from the falling down of the banks on the sides of such highways, or from any other cause, the surveyor is required from time to time, and within twenty-four hours after notice thereof from any justice of the peace of the county in which the parish may be situate, to cause the same to be removed. *Id. s.* 26.

To account.] Within fourteen days after the election or appointment of surveyor, the accounts made and signed by the surveyor, district surveyor, or assistant surveyor for the year preceding, of all monies received and disbursed by virtue of this Act, ending on the day of the election or appointment of surveyor shall be made up, balanced, and laid before the parishioners in vestry; and within one calendar month after such election or appointment, the said accounts shall be laid before the justices of the peace at a special sessions for the highways holden at the place nearest to the parish or district for which such surveyor shall have been appointed, and such justices are hereby authorized and required to examine him as to the truth of the said accounts or of any charge contained therein: provided always, that if any person, chargeable to the rate authorized to be made by this Act, has any complaint against such accounts or the application of the monies received by the said surveyor, it shall be lawful for any such inhabitant to make his

complaint thereof to such justices at the time of the verification of such accounts as aforesaid, and the said justices are hereby required to hear such complaint, and, if they shall think fit, to examine such surveyor upon oath, and to make such order thereon as to them shall seem meet. *Id. s.* 44.

At the special sessions held next after the twenty-fifth day of March, in every year, the surveyor of each of the parishes within their respective divisions shall verify his accounts, and shall make a return in writing to such special sessions of the state of all the roads, common highways, bridges, causeways, hedges, ditches, and watercourses appertaining thereto, and of all nuisances and encroachments, if any, made upon the several highways within the parish for which he was surveyor, as well as the extent of the different highways which the said parish is liable to repair, what part thereof has been repaired, and with what materials, at what expense, and what was the amount levied during the time he was surveyor of the said parish. *Id. s.* 45.

The surveyor at the time of passing his accounts as herein mentioned, shall deliver to the justices a statement in writing of the name and residence of the person appointed to succeed him as surveyor. *Id. s.* 10.

It may be necessary to state, that no appeal lies against the allowance of surveyors' accounts. *R.* v. *JJ. W. R. Yorkshire,* 10 *Law J.* 71, *m.* And the court refused a mandamus to the magistrates at a special sessions for the highways, commanding them to review their allowance of the surveyors' accounts, although the justices were anxious that it should be reheard, and had come to their decision under a mistaken impression that an appeal lay to the quarter sessions against it. *R.* v. *JJ. of the W. R. Yorkshire,* 10 *Law J.* 137, *m.*, 1 *Q. B.* 624.

To deliver up books, &c. on quitting office.] The said surveyor, district surveyor, or assistant surveyor shall, within fourteen days after leaving his office, deliver such books and accounts verified as herein directed, together with all such sums of money as shall be due from him, and likewise all tools, materials, implements, and other things as aforesaid, to his successors in office, or retain the same in his hands and account for them in his next account if he shall be continued surveyor or district surveyor of such parish in the succeeding year; and in case such surveyor or district surveyor shall neglect to deliver within such time as aforesaid the said books, papers, writings, and accounts, and such tools, materials, implements, and other things, in manner aforesaid, he shall for every such offence forfeit any sum not exceeding five pounds; and in case he shall make default in the paying or accounting for the money so due from him within the time and according to the

directions aforesaid, he shall forfeit double the money so due. *Id. s.* 42.

Penalty for neglect of duty.] If any surveyor or district surveyor, or assistant surveyor, shall neglect his duty in any thing required of him by this Act, for which no particular penalty is imposed, he shall forfeit for every such offence any sum not exceeding five pounds. *Id. s.* 20. *See Morgan* v. *Leach et al.*, 12 *Law J.* 4, *m.*

Duty of Collectors.

To receive and levy the rate.] The same powers, remedies, and privileges for levying and enforcing the payment of the highway rate, are given to the collector, as to the surveyor, by sect. 36, *ante*, p. 615. *And see sect.* 34, *post*, p. 624.

To account.] Every such collector shall, when and in such manner as the surveyor may direct, deliver true accounts of all monies received by him, and also a list of the names of such persons as shall have neglected or refused to pay; and such collector shall pay all such monies as shall remain due from him to the said surveyor; and if any such collector shall refuse or neglect to make and render such account, or to produce and deliver up the list of persons neglecting and refusing to pay their rates as aforesaid, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said surveyor, or to such person as he shall appoint to receive the same, within three days after being thereunto required by the said surveyor as aforesaid, by notice in writing under his hand given to or left at the usual place of abode of such collector, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said surveyor respecting the same, then, upon complaint made by the said surveyor of any such refusal or wilful neglect to any justice of the peace, such justice shall issue a summons under his hand for the collector to appear before any two justices of the peace; and upon the said collector appearing, or having been so summoned and not appearing without some sufficient or reasonable excuse, or not being found, it shall be lawful for the said two justices to hear and determine the matter; and if, upon confession of the party, or by the testimony of any credible witness on oath, it shall appear to such justices that any monies remain due from such collector, such justices shall upon non-payment thereof, by warrant under their hands, cause such money to be levied by distress and sale of the goods and

chattels of such collector; and if no goods and chattels of such collector shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, then in every such case such justices shall commit such offender to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to be kept to hard labour for a period not exceeding six calendar months, or until he shall have paid such monies as aforesaid, or compounded with the surveyor as aforesaid for such money (which composition the said surveyor, with the consent of the inhabitants in vestry, or, in any parish where they do not meet in vestry, with the consent of the inhabitants contributing to the highway rate at a public meeting assembled, is hereby empowered to make and receive); or if it shall appear to such justices that such collector had refused or wilfully neglected to render and give such accounts, or to produce and deliver the list of persons neglecting and refusing to pay their rates as aforesaid, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such collector, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, such collector shall, on conviction thereof, forfeit for such offence a sum not exceeding twenty pounds, and in default of payment thereof shall be committed to the common gaol or house of correction for the county, &c. where such offender shall be or reside, there to be kept to hard labour for a period not exceeding four calendar months, or until he shall have given a true and perfect account as aforesaid, and deliver such lists as aforesaid, and deliver up such books, papers, and writings, or give satisfaction in respect thereof to the said surveyor: provided always, that no conviction or imprisonment of such collector as aforesaid shall exonerate or discharge any security taken from him on his appointment as aforesaid. *Id. s.* 38.

2. *Special Sessions for the Highways.*

When and where holden.] The justices of the peace within their respective divisions, or any two or more of them, shall hold not less than eight nor more than twelve special sessions in every year for executing the purposes of this Act, the days of the holding thereof to be appointed at a special sessions to be held within fourteen days after the twentieth day of March in every year: provided always, that it shall not be necessary to cause any notice to be given or sent to any justice, acting and residing within such limits, of the day or time of the holding thereof. *Id. s.* 45.

3. *Highway Rate.*

By whom and how made.] And in order to raise money for carrying the several purposes of this Act into execution, a rate shall be made, assessed, and levied by the surveyor upon all property now liable to be rated and assessed to the relief of the poor; and upon such woods, mines, and quarries of stone, or other hereditaments, as have heretofore been usually rated to the highways; such rate to be signed by the said surveyor, and allowed by two justices of the peace, and published in the same way as poor rates are now allowed and published. *Id. s.* 27.

The words "usually rated" here, mean merely such woods, &c. as have usually been actually rated in the particular parish; and therefore, upon an appeal against a highway rate, it was holden that the sessions were right in inquiring whether certain woods were usually rated, in point of fact, at the time of the passing of the statute, and not whether such woods were rateable, or whether they were usually rated in other parishes. *R.* v. *Rose*, 13 *Law J.* 155, *m.*, 6 *Q. B.* 153.

And for this purpose the surveyor may, at all reasonable times, inspect, or by writing signed by him grant authority to any person to inspect, the poor rates of the parish of which he is surveyor, or the books of assessments thereto, and make copies thereof, or extracts therefrom; and if any person in whose custody or power the said rates or books shall be, shall, when thereunto required, refuse or neglect to produce the same to the surveyor, or person so by him authorized as aforesaid, or to allow such copy or extract to be made, or taken, at all reasonable hours in the day-time, he shall for every such offence forfeit and pay any sum not exceeding five pounds. *Id. s.* 28.

Form and amount.] Every rate shall contain the names of the occupiers, the description of the property they occupy, and the full annual value thereof, and shall also specify the sum in the pound at which it is made; and no such rate shall exceed at any one time the sum of ten-pence in the pound, or the sum of two shillings and sixpence in the pound in the whole in any one year, unless with the consent of four-fifths of the ratepayers assembled at a meeting specially called for that purpose. *Id. s.* 29.

Errors in it, how rectified.] If there be any omission or error in the rate, in the name of any person, tenement, &c., liable to be rated, the surveyor, with the approbation of the justices at a special sessions for the highways, may cause to be added or corrected in the said rate the name of the person omitted or erroneously stated, and a description of the property in respect

of which he ought to be rated; which being signed by such justices, shall be as effectual as if the same had originally been part of the rate. *Id. s.* 31.

What persons excused.] The justices at a special sessions for the highways, on application made to them by any person rated to any rate under the authority of this Act to be discharged therefrom, may, on proof of his inability through poverty to pay such rate (the surveyor having been first summoned to appear on the part of the parish), order that such person shall be excused from the payment of such rate. *Id. s.* 32.

Property, which previous to the passing of this Act, has been legally exempt from the performance of statute duty, or from the payment of composition in lieu thereof, or of highway rate, shall be exempt from the payment of the rate hereby imposed. *Id. s.* 33.

Rates, how recovered.] And for levying and recovering the said rate, the surveyor shall have the same powers, remedies, and privileges, as the overseers of the poor in the parish have by law for the recovery of any rate made for the relief of the poor. *Id. s.* 34. *See Morrell* v. *Martin*, 11 *Law J.* 22, *m. Charinton* v. *Johnson*, 14 *Law J.* 299.

Composition for rates.] In parishes in which the overseers of the poor have power by local Acts of Parliament to compound with or require composition for poor rates from the landlords of certain tenements, &c., and, in case of refusal to compound, to rate such landlords as the occupiers, the surveyor shall have the same powers, remedies, and privileges as to the rates authorized to be made by this Act. *Id. s.* 30.

Appeal against a rate.] If any person shall think himself aggrieved by any rate made under or in pursuance of this Act, or by any order, conviction, judgment, or determination made, or by any matter or thing done, by any justice or other person, in pursuance of this Act, and for which no particular method of relief hath been already appointed, such person may appeal to the justices at the next general or quarter sessions of the peace to be held for the county, division, riding, or place wherein the cause of such complaint shall arise,—such appellant first giving to the surveyor, or to such justice or other person by whose act such person shall find himself aggrieved, notice in writing of his intention to bring such appeal, together with a statement in writing of the grounds of such appeal, within fourteen days after such rate shall be made, or cause of complaint shall arise,—and within four days after such notice, entering into a recognizance before some justice,

with two sufficient sureties, conditioned to try such appeal at, and abide the order of, and pay such costs as shall be awarded by the justices at, such general or quarter sessions; and such justices, upon hearing and finally determining the matter of such appeal, may, according to their discretion, award such costs to the party appealing or appealed against, as they shall think proper: but in case there shall not be time to give such notice and enter into such recognizance before the next sessions, then such appeal may be made to the next following sessions, and shall be then heard and determined: provided also, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor, on the hearing of such appeal, to go into evidence of any other grounds of appeal than those set forth in such statement. *Id. s.* 105.

And in all cases of appeal against the rate made in pursuance of this Act, the several provisions and enactments contained in stat. 41 Geo. 3, c. 23, relative to poor rates, shall be applicable thereto, as if the same had been repeated and re-enacted in this Act. *Id. s.* 106.

But no rate, nor any proceeding to be had touching the conviction of any offender against this Act, or any order made, or any other matter or thing done or transacted in or relative to the execution of this Act, shall be vacated or quashed for want of form, or be removable (except as herein mentioned) by *certiorari*, or any other writ or process whatsoever, into any of his Majesty's courts of record at Westminster. *Id. s.* 107.

In any case of appeal, however, the court of quarter sessions may, if they think fit, state the facts specially for the determination of the court of King's Bench thereon, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said court of King's Bench, *Id. s.* 108.

4. *Repair of Highways.*

Liability to Repair.

Liability of parishes.] A parish, by common right, is bound to repair all public highways within it; even where a township, liable to repair a way by custom, was relieved of its liability by an Act of Parliament, it was holden that the liability thereby necessarily fell upon the parish at large. *R.* v. *Sheffield*, 2 *T. R.* 106. *And see R.* v. *St. George, Hanover-square*, 3 *Camp.* 222. *Anon. Lord Raym.* 725. *R.* v. *St. Giles, Cambridge*, 5 *M. & S.* 260. So, if a turnpike road be out of repair, the parish in which it is situate, or the township, if the town-

ship be liable by prescription to repair all roads within it, may be indicted for the non-repair of it; for the tolls received upon it are deemed an auxiliary fund merely, and do not relieve the parish, &c. of its liability. *R.* v. *Netherthong*, 2 *B.* & *A.* 179. But until the whole of the turnpike road, as described by the Act of Parliament upon the subject, be completed, the burthen of repairing it is not thrown upon the parish. *R.* v. *Cumberworth*, 3 *B.* & *Ad.* 108. *R.* v. *Edge Lane*, 4 *Ad.* & *El.* 723. *R.* v. *Cumberworth*, *Id.* 731. And if the Act be temporary, the liability will continue only as long as the Act remains in force. *R.* v. *Mellor*, 1 *B.* & *Ad.* 32. And no mere agreement between the parish and third persons, will relieve the former of its common law liability to repair. *R.* v. *Liverpool*, 3 *East*, 86, *and see R.* v. *Scarisbrick*, 6 *Ad.* & *El.* 509. Also it is not necessary, in this respect, that the way should have been a highway immemorially; it is sufficient that it is a public highway, to establish *primâ facie* the liability of the parish to repair it. *Aspindall* v. *Brown*, 3 *T. R.* 265. As to extra-parochial places, *see R.* v. *Midville*, 4 *Q. B.* 240.

How, where the highway is in two parishes.] And whereas it frequently happens that the boundaries of parishes pass across or through the middle of a common highway, and one side of such highway is situated in one parish, and the other side in another parish, whereby great inconveniences often arise in repairing the same; be it enacted, that the justices at a special sessions for the highways, on complaint of any surveyor of any parish (stating in writing, and on a plan thereunto annexed, that there is such a highway, one side whereof ought to be repaired by one parish, and the other side by another, and particularly describing the same by metes, bounds, and admeasurement thereof), may issue their summons, with a copy of such writing and plan thereunto annexed, to the surveyor of such other parish, to appear before them on a day mentioned in such summons; and if the parties appear, such justices may then proceed finally to decide the matter, in manner herein mentioned, in case all the parties shall consent thereto; but in case the surveyor summoned shall not appear on such first summons, or appearing shall require further time, such justices shall adjourn the further consideration of the matter for any further time, not more than twenty-one days, nor less than fourteen days, of which the surveyor not appearing, or appearing shall require further time, shall have notice, on which day the said justices shall proceed to hear the parties and their witnesses, and, whether the party summoned does or does not appear, shall proceed to examine and finally determine the matter in form following: (that is to say,) that such justices shall divide the whole of such common highway, by a transverse line crossing such

highway, into equal parts, or into such unequal parts and proportions as, in consideration of the soil, waters, floods and inequality of such highway, or any other circumstances attending the same, they in their discretion shall think just and right, and declare, adjudge, and order that the whole of such highway on both sides thereof, in any of such parts, shall be maintained and repaired by one of such parishes, and that the whole thereof on both sides, in the other of such parts, shall be maintained and repaired by the other of such parishes, and shall cause such their order, and a plan of such highway, and the allotment thereof as before mentioned, to be fairly delineated on paper or parchment, and filed with the clerk of the peace of the county in which such highway shall happen to lie, and shall also cause such posts, stones, or other boundaries to be placed and set up in such highway as in their judgment shall be necessary for ascertaining the division and allotment thereof, and in the case of any such last-mentioned highway, the repair of any part of which belongs to any body politic or corporate, or to any person, by the reason of tenure of any lands or otherwise, howsoever, the same proceedings may be adopted; but the said body politic or corporate, or person, or some one on their behalf, may appear before such justices, and object to such last-mentioned proceedings, in which case the said justices shall, before they divide such highway as aforesaid, hear and consider the objection so made, and determine the same. 5 & 6 *W.* 4, *c.* 50, *s.* 58.

And from and after such order and plan shall be so filed with the clerk of the peace, such parishes and body politic or corporate, or person aforesaid, respectively, shall be bound as of common right to maintain and keep in repair such parts of such highways so allotted to them as aforesaid, and shall be liable to be proceeded against for neglect of such duty, and shall in all respects whatsoever be liable and subject to all the provisions, regulations and penalties contained in this Act, and also, shall be discharged from the repair of such part of such highway, as shall not be included in their respective allotment. *Id. s.* 59. And the order of the special sessions, in this respect, is conclusive as to the liability of each parish, &c. *R.* v. *Hickling*, 14 *Law J.* 177, *m.*

And all costs, charges, and expenses to be incurred by reason of any of the proceedings, shall be borne and defrayed by such two parishes, or body politic or corporate, or person, aforesaid, the same being settled and ascertained and duly apportioned between such parishes by such justices; and in case the said parties shall refuse or neglect to pay their respective share thereof, the justices at a special sessions for the highways may levy the same by distress and sale, with costs of such distress, on the goods and chattels of any surveyor of the parish, or of any body politic or corporate, or person aforesaid,

so refusing or neglecting to defray such costs and charges as aforesaid. *Id. s.* 60.

Liability of townships.] If a township, by custom, have immemorially repaired either a particular road, or all roads within it, this is good evidence, and indeed conclusive, of its liability to repair; and it is not necessary to show any consideration for it. *R.* v. *Ecclesfield*, 1 *B.* & *A.* 348. *And see R.* v. *King's Newton*, 1 *B.* & *Ad.* 826. *R.* v. *Bp. Auckland*, 1 *Ad.* & *El.* 744. *See R.* v. *Scarisbrick*, 6 *Ad.* & *El.* 509. So, where a parish is divided into townships, A., B. and C.,—in an indictment against the parish for not repairing a road in it, the defendants may plead an immemorial custom for each of the townships separately to repair the highways within it, even although there be but the one road in A., and that a newly made road. *R.* v. *Barnoldswick*, 12 *Law J.* 44, *m.* 4 *Q. B.* 499. But the immemorial custom must be proved; otherwise the parish, and not the township, will be deemed liable. *R.* v. *Kingsmoor*, 2 *B.* & *C.* 190. *And see R.* v. *Penderryn*, 2 *T. R.* 513.

Persons or corporations.] Corporations, spiritual or temporal, having perpetual succession, may be liable by prescription to repair a highway; and that they have always, within living memory done so, will be good evidence of this prescriptive liability. To prove an individual liable, it is necessary to show a consideration for his liability. *See R.* v. *Ecclesfield*, 1 *B.* & *A.* 341, *per cur.* The usual consideration shown for the liability of an individual is, by reason of his tenure of certain lands; and if it be proved that he, and those who occupied the same lands before him, have always (*see R.* v. *Hayman*, *Moody* & *M.* 401. *R.* v. *Beeby*, 8 *Law J.* 38, *m.*) repaired the way in question, this will be good evidence of the liability. *See R.* v. *Skinner*, 5 *Esp.* 219. But where the sea swept away the road, which a man was bound *ratione tenuræ* to repair, and also the land over which it passed, it was holden that he was not bound to make a new road instead of it. *R.* v. *Bamber*, 13 *Law J.* 13, *m.*, 5 *Q. B.* 279. It must be observed, however, that it is the occupier, not the landlord, who is thus liable.

Another mode by which the occupier of land may become liable to repair a highway adjoining it, is by inclosure. Where a road is open to the land on either side of it, if the road become impassable or incommodious, the public have a right to go upon the adjacent land. 1 *Ro. Abr.* 390 *A. pl.* 1; *B. pl.* 1. *Absor* v. *French*, 2 *Show*, 38. *Taylor* v. *Whitehead*, *Doug.* 749. An inclosure of the land from the highway, deprives the public of this right; and for this reason it has been holden, that if the owner of the lands not enclosed, next adjoining to

a highway, incloses his lands on both sides, he is bound to make a perfect good way, so long as the inclosure lasts. 1 *Ro. Abr.* 390, *B. pl.* 1. *Duncombe's case, Cro. Car.* 366. *Hern's case, W. Jon.* 296. *R.* v. *Flecknow*, 1 *Burr.* 465. 1 *Hawk. c.* 76, *s.* 7. If he fence it in on one side only, he is liable to repair half of the way so fenced, to the centre thereof.

Highways thus repairable by individuals or corporations, may, by stat. 5 & 6 W. 4, c. 50, s. 62, become parish roads; by which section it is enacted that any body politic or corporate, or any person, liable to repair any highway by reason of tenure of any lands, or otherwise howsoever, or the surveyor of the parish in which the said highway is situate, may, if he or either party shall think proper, having first obtained the consent of the inhabitants in vestry assembled, apply to any justice for the purpose of making the said highway a parish highway, and to be repaired by the surveyor of the said parish; and the said justice is hereby authorized and required to issue his summons, requiring the said surveyor, or the party so liable to repair the said highway as aforesaid, to appear before the justices at the next special sessions for the highways, and if both parties appear, such juctices may then proceed to determine the matter; but in case the surveyor or party summoned shall not appear on such first summons, or appearing shall require further time, such justices shall adjourn the further consideration of the matter to the next special sessions for the highways, of which the said surveyor or party not appearing shall have notice, on which day the justices so assembled at such special sessions shall proceed to hear the parties and their witnesses, and whether the surveyor or party summoned do or do not appear, shall proceed to examine and determine the matter: and in case they decide that the said highway shall become a parish highway and be thereafter repaired by the surveyor of the said parish, they shall, by an order under their hands, fix the proportion of the expenses of repairing the said highway to be annually paid by such body politic or corporate or person as aforesaid, to the surveyor of the said parish, and the order of the said justices shall be binding on the surveyor and the said parish, and the said body politic or corporate or person as aforesaid, their heirs, successors, and assigns: Provided nevertheless, that the said justices, instead of fixing the proportion of the expenses of repairing the said highway to be annually paid as aforesaid, may by an order under their hands, fix a certain sum to be paid by such body politic or corporate or person as aforesaid, to the surveyor of the said parish, in full discharge of all claims thereafter in respect of the repairs of such highway; and in default of payment of such last-mentioned sum or of such annual sum as aforesaid, the said surveyor may proceed for the recovery thereof, in the same manner as any penalties and

forfeitures are recoverable under this Act: Provided always, that when the sum so fixed to be paid in full discharge of all claims thereafter in respect of the repair of such highways, shall exceed the sum of 100*l.*, the said sum when received shall be vested in the name of the minister, churchwardens, and surveyors of the highways of the parish within which such highway shall be situate, in some public government securities, and the interests and dividends from time to time arising or accruing therefrom shall be applied towards the repairs of the highways within the said parish; but when the sum so fixed to be paid in full discharge of all claims as aforesaid, shall not exceed the sum of one hundred pounds, the said last-mentioned sum, or any part thereof, on the application by and with the consent of the inhabitants of the parish in vestry assembled and of the justices in special sessions assembled, shall and may be paid to the surveyor of the said parish, to be applied towards the repair of the highways within the said parish. *Id. s.* 62.

Repair of ways dedicated to the public.] Before stat. 5 & 6 W. 4, c. 50, came into operation (20 March, 1836), if the owner of the fee upon his first making a street or road, put a gate or bar across it, or did any other act, publicly indicating that he did not dedicate it to the public, it could not be deemed a public highway; and if the gate or bar, &c. were not afterwards kept up for a considerable time, still its having been originally so put up, would rebut any mere presumption of its being dedicated to the public. *See Lethbridge* v. *Winter*, 1 *Camp.* 263, *n. Roberts* v. *Carr*, *Id.* 262, *n.* On the other hand, if the owner of the fee allowed the public to pass over a way through it, without hindrance or obstruction, or any other indication of his dissent, it was presumed (until the contrary was shown, *Barraclough et al.* v. *Johnson et al.*, 8 *Ad.* & *El.* 99,) that he dedicated it to the public, and it was deemed a public highway, *R.* v. *Lloyd*, 1 *Camp.* 260. *Lade* v. *Shepherd*, 2 *Str.* 1004. *Jarvis* v. *Dean*, 3 *Bing.* 447. *R.* v. *Leake*, 5 *B.* & *A.* 469, and was repairable by the parish in which it was situate. But no consent of a tenant merely, for any continuance of time, however long, would have had that effect. *Wood* v. *Veal*, 5 *B.* & *A.* 454. *And see Harper* v. *Charlesworth*, 4 *B.* & *C.* 591. *R.* v. *Edmonton*, 2 *Moody* & *M.* 24.

But by stat. 5 & 6 W. 4, c. 50, s. 23, no road or occupation way made or hereafter to be made by and at the expense of any individual or private person, body politic or corporate, nor any roads already set out or to be hereafter set out as a private driftway or horsepath in any award of commissioners under an Inclosure Act, shall be deemed or taken to be a highway which the inhabitants of any parish shall be compellable

or liable to repair,—unless the person, &c. proposing to dedicate such highway to the use of the public, shall give three calendar months' previous notice in writing, to the surveyor of the parish, of his intention to dedicate such highway to the use of the public, describing its situation and extent, and shall have made the same in a substantial manner, and of the width required by this Act, and to the satisfaction of the said surveyor and of any two justices of the peace of the division in which such highway is situate, in petty sessions assembled, who are hereby required, on receiving notice from such person or body politic or corporate, to view the same, and to certify that such highway has been made in a substantial manner, and of the width required by this Act, at the expense of the party requiring such view, which certificate shall be enrolled at the quarter sessions holden next after the granting thereof,—then and in such case, after the said highway shall have been used by the public, and duly repaired and kept in repair by the said person, body politic or corporate, for the space of twelve calendar months, such highway shall for ever thereafter be kept in repair by the parish in which it is situate: Provided nevertheless, that on receipt of such notice as aforesaid, the surveyor of the said parish shall call a vestry meeting of the inhabitants of such parish, and if such vestry shall deem such highway not to be of sufficient utility to the inhabitants of the said parish, to justify its being kept in repair at the expense of the said parish, any one justice of the peace, on the application of the said surveyor, shall summon the party proposing to make the new highway to appear before the justices at the next special sessions for the highways to be held in and for the division in which the said intended highway shall be situate; and the question as to the utility as aforesaid of such highway, shall be determined at the discretion of such justices. *Id. s.* 23.

Repairs of ways set out under inclosure Acts.] By the General Inclosure Act, 8 & 9 Vict. c. 118, s. 67, "as soon as two justices of the peace for the county, &c., in which lands to be inclosed are situate, shall certify any of the public roads and ways, to be set out in pursuance of that Act on any inclosure, to be sufficiently formed and completed, such roads shall thenceforth be kept in repair by such persons and in such manner as the public roads within the said parish are or ought by law to be kept in repair," and every such certificate shall be filed of record with the clerk of the peace, at the next quarter sessions for the county, &c. A road set out as a private way, however, is not to be repaired by the parish in which it is situate. *R.* v. *Richards*, 8 *T. R.* 634. Even where an Inclosure Act authorized commissioners to set out

public and private roads, the public roads to be repaired as other public roads, and the private roads to be repaired by such persons and in such manner as the commissioners should direct; and the commissioners, after setting out public and private roads, awarded that all ways, whether public or private, should be repaired in like manner as other public highways are repaired by the laws of this realm: the court held that the award, in this respect, as far as it related to private ways, was bad, and that no indictment, therefore, would lie against the parish for the nonrepair of one of the private ways. *R.* v. *Cottingham*, *6 T. R.* 20. But if a way, at first set out as a private way, afterwards become public, and the public use it, with the acquiescence of the parish in which it is situate, this will be deemed a dedication to and adoption by the public of the road, and will throw the burthen of repairing it upon the parish, *see R.* v. *Wright*, 3 *B.* & *Ad.* 681. *R.* v. *St. Benedict, Cambridge*, 4 *B.* & *A.* 447, unless it be a private "driftway or horsepath," in which case the notice and proceeding required by 5 & 6 W. 4, c. 50, s. 23, *ante*, p. 630, must previously be had, before the parish will be liable to repair it.

Repair of ways to and over bridges.] As to all bridges built before the stat. 5 & 6 W. 4, c. 50, came into operation, (20th March, 1836), the road over the bridge, and to the distance of 300 feet from each end of it,—the county in which such bridge is situate is bound *primâ facie* to repair it. 22 *H.* 8, *c.* 5, *s.* 9. *R.* v. *Inhabitants W. R. Yorkshire*, 5 *Taunt.* 284, *per Ld. Eldon.* And by the Highway Act, 5 & 6 W. 4, c. 50, s. 22, the several powers and authorities hereby vested in the surveyor of highways, as well for the getting of materials, as the preventing and removing of all nuisances and annoyances, shall be and the same are hereby vested in the surveyor of county bridges and the roads at the ends thereof repairable therewith; and the several penalties, forfeitures, matters, and things in this Act contained relating to highways, shall be and the same are hereby extended, as far as applicable, to such bridges, and the roads at the ends thereof as aforesaid. *Id. s.* 22.

But where any bridge shall hereafter be built, which bridge shall be liable by law to be repaired by any county or part of a county, all highways leading to, passing over, and next adjoining to such bridge, shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road, who were by law before the erection of the said bridge bound to repair the said highways; but nothing herein contained shall extend or be construed to extend to exonerate or discharge any county or any part of any county

from repairing or keeping in repair the walls, banks, or fences of the raised causeways and raised approaches to any such bridge, or the land arches thereof. *Id. s.* 21.

Repairs, how compelled by the Petty Sessions.

Where the liability to repair is not disputed.] If any highway is out of repair, or is not well and sufficiently repaired and amended, and information thereof, on the oath of one credible witness, is given to any justice of the peace, such justice shall issue a summons, requiring the surveyor of the parish, or other person, or body politic or corporate, chargeable with such repairs, to appear before the justices at some special sessions, for the highways, to be held within the division in which the said highway may be situate; and the said justices shall either appoint some competent person to view the same, and report thereon to the justices in special sessions on a certain day and place to be then fixed, at which the said surveyor of the highways or other party as aforesaid shall be directed to attend, or the said justices shall fix a day whereon they or any two of them shall attend to view the said highway; and if to the justices, at such petty sessions, it shall appear, either on the report of the said person so appointed by them to view, or on the view of such justices, that the said highway is not in a state of thorough and effectual repair, they the said justices at such last mentioned special sessions shall convict the said surveyor or other party liable to the repair of the said highway in any penalty not exceeding five pounds, and shall make an order on the said surveyor or other person or bodies politic or corporate liable to repair such highway, by which order they shall limit and appoint a time for the repairing of the same, and in default of such repairs being effectually made within the time so limited, the said surveyor, or such other person or body politic or corporate as aforesaid, shall forfeit and pay to some person, to be named and appointed in a second order, a sum of money to be therein stated, and which shall be equal in amount to the sum which the said justices shall, on the evidence produced before them, judge requisite for repairing such highway, which money shall be recoverable in the same manner as any forfeiture is recoverable under this Act, and such money when recovered shall be applied to the repair of such highway; and in case more parties than one are bound to repair any such highway, the said justices shall direct in their said order what proportion shall be paid by each of the said parties; but if the said highway so out of repair is a part of the turnpike road, the said justices shall summon the treasurer or surveyor or other officer of such turnpike road, and the order herein directed to be made shall be made on such

treasurer or surveyor or other officer as aforesaid, and the money therein stated shall be recoverable as aforesaid: Provided nevertheless that the said justices shall not have power to make such order as aforesaid in any case where the duty or obligation of repairing the said highway comes in question. *Id. s.* 94. In any conviction or order under this section, it must appear that the highway in question is within the division for which the special sessions are holden; for otherwise it would not appear that the justices had jurisdiction. *See R.* v. *Martin et al.*, 13 *Law J.* 45, *post*, p. 635.

Costs.] And if any surveyor or other person shall be summoned before any justice, to answer any information or complaint exhibited or made against him touching or concerning any offence by him committed against the provisions of this Act, or for any supposed neglect of duty, and such surveyor or other person be convicted thereof, such justice may order the payment by such surveyor or other person of all costs or proceedings against him; but in case such information or complaint shall afterwards be withdrawn, or quashed, or dismissed, or if the defendant shall be acquitted, such justices may order that the person exhibiting such information or complaint shall pay to the defendant all such costs as to such justices shall seem reasonable. *Id. s.* 97. And the justices, if they order costs at all, must do so under this Act; they cannot order it under stat. 18 G. 3, c. 19, s. 1, *ante*, p. 365. *Glover* v. *Chambers et al.*, 12 *Law J.* 94, *m.*

Fine, &c. how levied and applied.] In default of immediate payment of the sum so awarded, it shall be lawful for such justices to cause the same to be levied by distress and sale of the goods and chattels of the person ordered to pay the same, together with the costs of such distress and sale; and if sufficient goods and chattels cannot be found, it shall be lawful for such justices to commit such person to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding one calendar month, unless the sum so awarded, together with all costs and expenses, shall be sooner paid and satisfied. *Id. s.* 97.

And no fine, issue, penalty, or forfeiture for not repairing the highway, or not appearing to any indictment for not repairing the same, shall hereafter be returned into the court of Exchequer or other court, but shall be levied by and paid into the hands of such person residing in or near the parish where the road shall lie, as the justices or court imposing such fines, &c. shall order and direct, to be applied towards the repair and amendment of such highway; and the person so ordered to receive such fine shall receive, apply, and account for the same, according to the direction of such justices or court, or

in default thereof shall forfeit double the sum received; and if any fine, &c. to be imposed for not repairing the highway, or not appearing as aforesaid, shall hereafter be levied on any inhabitant of such parish, township, or place, then such inhabitant shall and may make his complaint to the justices at a special sessions for the highways; and the said justices are hereby empowered and authorized, by warrant under their hands, to make an order on the surveyor of the parish for payment of the same out of the money receivable by him for the highway rate, and that he shall within two months next after service of the said order on him, pay unto such inhabitant the money therein mentioned. *Id. s.* 96.

Where the liability to repair is disputed.] And if on the hearing of any such summons respecting the repair of any highway, the duty or obligation of such repairs is denied by the surveyor on behalf of the inhabitants of the parish, or by any other party charged therewith, such justices shall direct a bill of indictment to be preferred, and the necessary witnesses in support thereof to be subpœnaed, at the next assizes to be holden in and for the said county, or at the next general quarter sessions of the peace for the county, riding, division, or place wherein such highway shall be, against the inhabitants of the parish or the party to be named in such order, for suffering and permitting the said highway to be out of repair; and the costs of such prosecution shall be directed by the judge of assize, before whom the said indictment is tried, or by the justices at such quarter sessions, to be paid out of the rate made and levied in pursuance of this Act, in the parish in which such highway shall be situate: Provided nevertheless, that it shall be lawful for the party against whom such indictment shall be so preferred at the quarter sessions as aforesaid, to remove such indictment by *certiorari* or otherwise into his Majesty's court of King's Bench. *Id. s.* 95. The order under this section must show that the highway was situate within the division for which the special sessions was holden; otherwise the court of quarter sessions will not be warranted in allowing the costs of the prosecution. *R.* v. *Martin et al.*, 13 *Law J.* 45, *m.* 2 *Q. B.* 1037, *n.*

Repairs, how compelled by Indictment.

Indictment, in what cases.] Allowing a public highway to be out of repair, is a nuisance, and a misdemeanor in the inhabitants of the parish or township, or in the corporation or individual, liable by law to repair it. *See the forms of the indictment, Arch. Pr. Qu. Sess.* 214, 224; *of the other pleadings, Id.* 221, 223; *and the evidence necessary to support them, Id.* 215,

222, 223. And the clause in the Highway Act already mentioned, (*sect.* 94, *ante*, p. 634,) which enables justices at petty sessions to entertain a complaint upon this subject, where the liability to repair is not disputed, does not, it should seem, prevent parties proceeding by indictment in the first instance. As to the cases in which justices at petty sessions may direct a bill of indictment to be preferred, *see stat.* 5 & 6 *W.* 4, *c.* 50, *s.* 95, *supra*.

Witnesses.] No person shall be deemed incompetent to give evidence, in any action, suit, prosecution, or other legal proceedings to be had in any court of law or equity, or before any justice or justices of the peace, under or by virtue of this Act, by reason of being an inhabitant of the parish in which any offence shall be committed, or of being a treasurer, clerk, surveyor, district surveyor, assistant surveyor, collector, or other officer appointed by virtue of this Act; nor shall such evidence for any of the reasons aforesaid be rejected or liable to be questioned. *Id. s.* 100. *And see R.* v. *Inhabitants of Bondgate in Aukland*, 1 *Ad. & El.* 744.

Costs.] And the court before whom any indictment shall be preferred for not repairing highways, may award costs to the prosecutor to be paid by the person so indicted, if it shall appear to the said court that the defence made to such indictment was frivolous or vexatious. *Id. s.* 98. *See s.* 97, *ante*, p. 634, *and see R.* v. *Preston*, 7 *Dowl.* 593. *R.* v. *Pembridge*, 12 *Law J.* 259, *qb.* 3 *Q. B.* 901. And where the prosecution is ordered by the petty sessions under the 95th section of the Act, we have seen (*ante*, p. 635), that the judge at the assizes, before whom the indictment is tried, or the court of quarter sessions, shall order the costs of the prosecution to be paid out of the highway rate,—provided the justices' order for the indictment be a valid order. *R.* v. *Hickling*, 15 *Law J.* 23, *m.* And it is imperative upon the judge, in such a case to grant the costs, although the defendant be acquitted, *R.* v. *Heanor*, 13 *Law J.* 144, *m.*, provided the way be a public highway, and proved at the trial to be so, *R.* v. *Down, Holland*, 15 *Law J.* 25, *m.*, and the liability to repair it be the matter in dispute. *R.* v. *Heanor*, 14 *Law J.* 38, *m.* *See R.* v. *Chedworth*, 9 *Car. & P.* 285, *cont.* Where the costs are allowed, care should be taken to have the costs taxed, and the amount inserted in the order, during the assizes or sessions at which the indictment is tried. *See R.* v. *Clark*, 13 *Law J.* 91, *m.* 5 *Q. B.* 887.

Costs of defendant, when paid out of highway rate.] If the inhabitants of any parish shall agree at a vestry to defend any indictment found against any such parish, or to appeal against any order made by, or proceeding of, any justice of the peace in

the execution of any powers given by this Act, or to defend any appeal, it shall and may be lawful for the surveyor of such parish to charge in his account the reasonable expenses incurred in defending such prosecution, or prosecuting or defending such appeal, after the same shall have been agreed to by such inhabitants at a vestry or public meeting as aforesaid, and allowed by two justices of the peace within the division where such highway shall be; which expenses, when so agreed to or allowed, shall be paid by such parish out of the fines, forfeitures, payments and rates authorized to be collected and raised by virtue of this Act: provided nevertheless, that if the money so collected and raised is not sufficient to defray the expenses of repairing the highways in the said parish, as well as of defending such prosecution, or prosecuting or defending such appeal as aforesaid, the said surveyor is hereby authorized to make, collect, and levy an additional rate, in the same manner as the rate by this Act is authorized to be made for the repair of the highway. *Id. s.* 111.

Presentment.] It shall not be lawful hereafter to take or commence any proceeding, by presentment, against the inhabitants of any parish, or other person, on account of any highway or turnpike road being out of repair. *Id. s.* 99.

Repairs, how made.

Materials from waste lands.] Every surveyor, in any waste lands or common ground, river or brook within the parish for which he shall be surveyor, or within any other parish wherein gravel, sand, stone, or other materials are respectively likely to be found, (in case sufficient cannot be conveniently had within the parish where the same are to be employed, and sufficient shall be left for the use of the roads in such other parish,) may search for, dig, get, and carry away the same, and likewise may gather stones lying upon any lands or grounds within the parish for such purpose, without making any satisfaction for the said materials; but satisfaction shall be made for all damages done to the lands of any person by carrying away the same, in the manner hereinafter directed for getting and carrying materials in inclosed lands; but no such stones shall be gathered without the consent of the owner of such lands, or a licence for that purpose from two justices at a special sessions for the highways, after having summoned such owner to come before them, and heard his reasons (if he shall appear and give any) for refusing his consent. *Id. s.* 51.

But this is not to extend to stones or other materials thrown up by the sea, commonly called beach, where the removal of the same would cause any damage or injury by inundation to

the lands adjoining, or increased danger of encroachment by the sea. *Id. s.* 52.

As to the allotment of lands, for supplying materials for the repair of highways, upon the inclosure of waste lands, &c. See *stat.* 8 & 9 *Vict. c.* 118, *s.* 72.

Materials from inclosed lands.] Every such surveyor may, for the use aforesaid, by licence in writing from the justices at a special sessions for the highways, search for, dig and get materials (if sufficient cannot be had conveniently within such waste lands, common grounds, rivers, or brooks), in or through any of the several or inclosed lands or grounds of any person whomsoever (such lands or grounds not being a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or inclosed wood, not exceeding one hundred acres in extent), within the parish where the same shall be wanted, —or within any other parish adjoining or lying near to the highway for which such materials shall be required, if it shall appear to such justices that sufficient materials cannot be conveniently had in the parish where such highways lie,—or in the waste lands, or common grounds, rivers or brooks of such adjacent parish,—and that a sufficient quantity of materials will be left for the use of the parish where the same shall be; the said surveyor making such satisfaction for the materials which may be got or taken away, and also for the damage done to such lands by the getting or carrying away the same, as shall be settled and ascertained by order of the justices at a special sessions for the highways. *Id. s.* 54.

But no surveyor or other person shall dig, gather, get, take, or carry away any materials for making or repairing any highway, out of any inclosed land, until one calendar month's notice in writing, signed by the surveyor, shall have been given to the owner of the premises, or to his known agent, and to the occupier thereof, or left at the house or last or usual place of abode of such owner or agent, and occupier, to appear before the justices at a special sessions for the highways, to show cause why such materials shall not be had therefrom; "and in case such owner, agent, or occupier shall attend pursuant to such notice, but shall not show sufficient cause to the contrary, such justices shall, if they think proper, authorize such surveyor or other person to dig, get, gather, take, and carry away such materials at such time or times as to such justices shall seem proper; and if such owner, agent, or occupier shall neglect or refuse to appear by himself or his agent, the said justices shall and may (upon proof on oath of the service of such notice) make such order therein as they shall think fit, as fully and effectually to all intents and purposes as if such owner or occupier, or his agent had attended." *Id. s.* 53.

Lands, in the exclusive occupation of any one or more persons for agricultural purposes, shall be deemed to be inclosed lands within the meaning of stat. 5 & 6 W. 4, c. 50, ss. 53, 54, as to obtaining materials for highways, and a similar section of stat. 3 G. 4, c. 126, as to turnpike roads. 4 & 5 *Vict. c.* 51. This latter statute became necessary, in consequence of the case of *Tapsall* v. *Crosskey*, 7 *Mees. & W.* 441, in which the court of Exchequer decided that the words "inclosed lands" in stat. 3 G. 4, c. 126, s. 98, meant lands actually inclosed and surrounded with fences, and did not extend to downs, not actually fenced off, although they were private property, and not subject to any right of common.

Surveyor doing damage in taking materials.] And if any surveyor shall dig or cause to be dug materials for the highways, whereby any bridge, mill, building, dam, highway, occupation road, ford, mines, or tin works, or other work, may be damaged or endangered, he shall forfeit for every such offence, on conviction, any sum not exceeding five pounds, at the discretion of the justices before whom the complaint thereof shall be made, notwithstanding his liability to any civil action to which he may make himself liable by such Act. *Id. s.* 57.

Surveyor may contract for materials.] In every parish, the surveyor may, with the consent of the inhabitants in vestry, contract for purchasing, getting, and carrying the materials required for the repair of the highway; and if any surveyor shall have any part, share, or interest, directly or indirectly, in any contract or bargain for work or materials to be made, done, or provided, upon, for, or on account of any of the highways or other works whatsoever under his care or management, or shall upon his own account, directly or indirectly, use or let to hire any team, or use, or sell, or dispose of any materials, to be used or employed in making or repairing such highway or other works as aforesaid, (unless a licence in writing for the sale of any such materials, or to let to hire any such team, be first obtained from two justices of the peace in special sessions assembled,) he shall forfeit for every such offence, on conviction, any sum not exceeding ten pounds, and be for ever after incapable of being employed as a surveyor with a salary under the authority of this Act. *Id. s.* 46. *See the form of conviction &c., post*, p. 662.

Ratepayers to have the carriage of materials.] Two ratepayers of any parish, within six days next after the annual appointment of the surveyor, by a notice in writing, may require him to call a meeting of the ratepayers for the purpose hereafter mentioned, and he shall call such meeting accordingly; and if at such meeting a majority of the ratepayers shall sig-

nify their consent, it shall be lawful for the ratepayers keeping a team or teams of two or more horses or beasts of draught, to divide among themselves, in proportion to the amount of rate to which they may respectively be assessed, the carrying of the material which may be required by the said surveyor for the repairs of the highways, and they shall be paid by the said surveyor for such carrying or task-work, within one calendar month after having performed such service, after such rate *per* cubic yard of material *per* mile, as shall be fixed by the justices at their first meeting in special sessions for the highways after the twenty-fifth day of March in every year, which rate the said justices are hereby required to fix at such special sessions: such carrying to be performed at such times, &c. as the surveyor may direct, (spring, seed-time, and harvest excepted): and in case the surveyor shall not approve of the manner in which such carrying shall be performed, the justices at a special sessions for the highways may hear the complaint of such surveyor in that respect, and award such pecuniary redress or forfeiture against the party offending as to them shall appear reasonable. *Id. s.* 35.

Heaps of stones not to be left on highway.] If any surveyor or district surveyor shall lay or cause to be laid any heap of stone or any other matter or thing whatsoever upon any highway, and allow the same to remain there at night to the danger or personal damage of any person passing thereon, all due and reasonable precaution not having been taken by the said surveyor to guard against the same, he shall forfeit for every such offence any sum not exceeding five pounds. *Id. s.* 56.

Pits, &c. to be filled up.] And if any surveyor or person employed by him shall, by reason of the searching for, digging, or getting any materials for repairing any highways, make any pit or hole in lands, &c. wherein such materials shall be found, he shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired during such time as the said pit or hole shall continue open,—and within three days after such pit or hole shall be opened or made, (where no materials shall be found,) cause the same to be forthwith filled up, levelled, and covered with the turf or clod which was dug out of the same,—and, where any such materials shall be found, within fourteen days after having dug up sufficient materials in such pit or hole, cause the same to be filled up or sloped down, and fenced off, if required by the owner of the land, and so continued; and every surveyor shall, within twenty-one days after he shall have been appointed to that office, cause all the said pits and holes, which shall then be open and not likely to be further useful, to be filled up or sloped down in

manner aforesaid; and if they are likely to be further useful he shall secure the same by posts and rails or other fences to prevent accidents to persons or cattle; and in case such surveyor or person shall neglect to fill up, slope down, or fence off such pit or hole in manner and within the time aforesaid, he shall forfeit the sum of ten shillings for every such default; and in case such surveyor or person shall neglect to fence off such pit or hole, or to slope down the same, as hereinbefore directed, for the space of six days after he shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before the justices at a special sessions for the highways, such surveyor or person shall forfeit and pay any sum not exceeding ten pounds for such neglect, to be determined and adjudged by such justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, and toward the repair of the roads in the parish where the offence shall be committed, in such manner as the said justices shall direct and appoint; which forfeiture, in case the same be not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied. *Id. s.* 55. *See Morgan* v. *Leach et al.*, 12 *Law J.*, 4, *m.*

Penalty for taking away materials.] And if any person shall, without the consent of the surveyor, take away materials which shall have been purchased, gotten, dug, or gathered for the repair or use of any highway,—or any materials out of any quarry which shall have been made, dug, or opened for the purpose of getting materials for any highway, before the surveyor and his workmen shall have discontinued working therein for the space of six weeks (except the owner of any private grounds and persons authorized by such owner to get materials in such quarry for his own private use, and not for sale): every person so offending shall, for every such offence, forfeit and pay, on conviction thereof, any sum not exceeding ten pounds. *Id. s.* 47.

Lands for maintaining highways.] When any lands or tenements have been or shall be given for maintenance of highways, they shall be let to farm at the most improved yearly value, without fine, for any term not exceeding ninety-nine years: provided nevertheless, that previous to the granting of such lease, the consent of the justices at a special sessions for the highways, (neither of such justices being interested therein,) by writing under their hands, shall be obtained, as to the

amount of rent to be received and the duration of the term. *Id. s.* 50.

Where land shall have been allotted to parishes for the purpose of obtaining materials for the repair of the highways therein, and the materials in such land shall be exhausted, the surveyor of such parish may with the consent of the vestry, and he shall with the consent in writing of the justices of the peace at a special sessions for the highways, sell and convey to some person whose lands adjoin thereto, or, if he refuse to purchase, to any other person, the said land, at and for such price as the said justices may deem fair and reasonable; and with the money arising therefrom, with such consent as aforesaid, shall purchase other lands in lieu thereof. *Id. s.* 48. And the same, as to all lands belonging to a parish, for the purpose of obtaining materials for the repair of the highways, and which have been used for that purpose, as soon as the materials are exhausted. 8 & 9 *Vict. c.* 71.

Width of highways.] The surveyor shall make, support, and maintain every public cartway, leading to any market town, twenty feet wide at the least, and every public horseway eight feet wide at the least, and to support and maintain every public footway by the side of any carriageway or cartway three feet at the least, if the ground between the fences including the same will admit thereof: but nothing herein contained shall require any surveyor to make or form any public footway, without the consent of the inhabitants in vestry assembled. *Id. s.* 80.

Width of gates.] If any gate across any public cartway shall be less than ten feet wide, or any gate across any public horseway shall be less than five feet wide, clear between the posts thereof, then and in every such case, upon notice in writing from the surveyor to the person to whom such gate shall belong, left at the dwelling-house of such person or his steward or agent, requiring him to enlarge the same,—if such person shall neglect for the space of twenty-one days after such notice shall have been left as aforesaid to remove or enlarge such gate, he shall forfeit a sum not exceeding ten shillings for every day he shall so neglect to remove or to enlarge such gate as aforesaid. *Id. s.* 81.

Way, whilst highway repairing.] The surveyor may make a road through the grounds adjoining to any ruinous or narrow part of any highway, (not being the site or ground whereon any house stands, nor being a garden, lawn, yard, court, park, paddock, plantation, planted walk or avenue to any house, or inclosed ground set apart for building ground, or as a nursery

for trees,) to be made use of as a public highway, whilst the old road is repairing or widening, making such recompence to the proprietor or occupier of such grounds for the damages they may thereby sustain as the justices at a special sessions for the highways assembled may think reasonable, such sum so awarded as a recompence to be recoverable in the same manner as any fines and forfeitures are recoverable under this Act. *Id. s.* 25.

5. *Widening Highways.*

In what cases and how.] Where it shall appear, upon the view of two justices of the peace, that any highway is not of sufficient breadth, and might be widened and enlarged, such justices shall and they are hereby empowered, within their respective divisions, to order such highway respectively to be widened and enlarged in such manner as they shall think fit, so that the said highway, when widened and enlarged, shall not exceed thirty feet in breadth; but neither of the said powers shall extend to pull down any house or building, or to take away the ground of any garden, lawn, yard, court, park, paddock, planted walk, plantation, or avenue to any house, or any inclosed ground set apart for building ground or as a nursery for trees; and for the satisfaction of the person, who is seised or possessed of or interested in his own right, or in trust for any other person, in the said ground that shall be laid into the said highway respectively so to be widened and enlarged, the said surveyor, under the direction and with the approbation of the said justices in writing, shall and is hereby empowered to make an agreement with him for the recompence to be made for such ground, and for the making such new ditches and fences as shall be necessary, according and in porportion to his interests therein, and also with any other person, body politic or corporate, that be injured by the widening and enlarging such highway, for the satisfaction to be made to them as aforesaid; and if the said surveyor, under the direction and with the approbation of the said justices, cannot agree with the said person, or if he cannot be found, or shall refuse to treat or take such recompence or satisfaction as shall be offered to him by such surveyor, then the justices of the peace at any general quarter sessions to be holden for the limit wherein such ground shall lie, upon certificate in writing signed by the justices making such view as aforesaid of their proceedings in the premises, and upon proof of fourteen days' notice in writing having been given by the surveyor of such parish to the owner, occupier, or other person, interested in such ground, or to his guardian, trustee, clerk, or agent, sig-

nifying an intention to apply to such quarter sessions for the purpose of taking such ground, shall "impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions: and the said jury shall upon their oaths, to the best of their judgment, assess the damages to be given and recompence to be made to the owners and others interested as aforesaid in the said ground for their respective interests, as they shall think reasonable, not exceeding forty years' purchase for the clear yearly value of the ground so laid out, and likewise such recompence as they shall think reasonable for the making of new ditches and fences on the side of the said highway that shall be so widened and enlarged, and also satisfaction to any person, body politic or corporate, that may be otherwise injured by the widening and enlarging the said highways respectively;" and upon payment or tender of the money so to be awarded and assessed to the person entitled to receive the same, or leaving it in the hands of the clerk of the peace of such limit, in case such person cannot be found or shall refuse to accept the same, for the use of the owners of or others interested in the said ground, the interest of the said person, body politic or corporate, in the said ground, shall be for ever divested out of them; and the said ground after such agreement or verdict as aforesaid shall be esteemed and taken to be a public highway to all intents and purposes whatsoever; saving nevertheless to the owner of such ground all mines, minerals, and fossils lying under the same which can or may be got without breaking the surface of the said highway, and also all timber and wood growing upon such ground, to be felled and taken by such owner within one month after such order shall have been made, or in default thereof to be felled by the said surveyor within the respective months aforesaid, and laid upon the land adjoining, for the benefit of the said owner; and where there shall not appear sufficient money in the hands of the surveyor for the purpose aforesaid, then the said two justices in cases of agreement, or the said court of quarter sessions after such verdict as aforesaid, shall direct the surveyor to make, collect, and levy an equal rate in the same manner as the rate by this Act authorized to be made, and to pay the money to the person so interested, in such manner as the said justices, or court of quarter sessions respectively shall direct and appoint, and the money thereby raised shall be employed and accounted for according to the order and direction of the said justices or court of quarter sessions respectively for and towards the purchasing the land to widen and enlarge the said highway, and for making the said ditches and fences, and also satisfaction for the damages sustained thereby; provided that no such rate to be made in any one year shall exceed one-third part of the rate by this Act

authorized to be levied, in addition to the rate for the repair of the highways. *Id. s.* 82.

The following is the form of the justices' order:— *We, —— two of Her Majesty's justices of the peace for the said county, acting within the* [*hundred, &c.*] *of —— within the said county, having, upon view, found that a certain part of the highway between —— and —— in the* [*parish, &c.*] *of —— in the said* [*hundred*], *for the length of —— yards or thereabouts, and particularly described in the plan hereunto annexed, is for the greatest part thereof narrow, but may be conveniently enlarged and widened by adding thereto from the lands and grounds of —— and —— of the length of —— yards or thereabouts, and of the breadth of ——feet or thereabouts, particularly described in the plan hereunto annexed, which we think will widen and enlarge the same, and be much more commodious to the public, do hereby order, that the said highway be widened and enlarged accordingly, and that the surveyor* [or *surveyors*] *of the* [*parish, &c.*] *of —— where the said old highway lies, do forthwith proceed to treat and make agreement with the said —— and —— for the recompence to be made for the said ground, and for the making such ditches and fences as shall be necessary, in such manner, with such approbation, and by pursuing such measures and directions in all respects as are warranted and prescribed by the statute made in the fifth and sixth year of the reign of King William the Fourth, intituled, "An Act," &c.**; *and in case such agreement shall be made as aforesaid, we do order an equal assessment, not exceeding the rate of —— in the pound, to be made, levied, and collected upon all and every the parties liable to the payment of the highway rate in the said* [*parish, &c.*] *of ——, and that the money arising thereupon be paid and applied in making such recompence and satisfaction as aforesaid, pursuant to the directions of the said Act.*

A. B.
C. D.

The following is the form of the justices' certificate to the quarter sessions:— *To the justices of the peace at their general quarter sessions to be held at —— in the said county, the —— day of —— one thousand eight hundred and ——, We, the within-named A. B. and C. D., do hereby certify to the said court of quarter sessions, that we made and signed the within order, and that with our approbation and by our direction the said surveyor* [or *surveyors*] *has* [or *have*] *treated with the said —— and —— for the said lands required for the purposes aforesaid, but was not able to make any agreement for that purpose*

* "An Act to consolidate and amend the laws relating to highways in that part of Great Britain called England."

with them or either of them, and that he tendered to the said —— the sum of ——, and to the said —— the sum of ——, as a recompence for the said ground, and for the making the said ditches and fences, which he [or *they and each of them*] *refused to receive.*

A. B.
C. D.

Costs.] And in case such jury shall deliver a verdict for more monies as a recompence for the right, interest, or property of any person in such lands, or for the making such fence, or for such damage or injury to be sustained by him as aforesaid, than what shall have been proposed and offered by the said surveyor before such application to the said court of quarter sessions as aforesaid, that then and in such case the costs and expenses attending the said several proceedings shall be borne and paid by the surveyor, out of the monies in his hands or to be assessed and levied by virtue and under the powers of this Act; but if such jury shall give and deliver a verdict for no more or for less monies than shall have been so offered and proposed by the said surveyor before such application to the said court of quarter sessions, that then the said costs and expenses shall be borne and paid by the person, who shall have refused to accept the recompence and satisfaction so offered to him as aforesaid. *Id. s.* 83.

What highways.] And the powers and provisions in this Act contained with respect to the widening and enlarging, diverting, turning, or stopping up any highway, shall be applicable to all highways which any person, bodies politic or corporate, is or are bound to repair by reason of any grant, tenure, limitation, or appointment of any charitable gift, or otherwise howsoever; and that when such last mentioned highways are so widened or enlarged, turned or diverted, the same shall and may, by an order of the justices at a special sessions for the highways, be placed under the control and care of the surveyor of the parish in which such highways may be situate, and shall be from time to time thereafter repaired and kept in repair by the said parish: provided also, that the said highways so widened, enlarged, diverted, or turned, shall be viewed by two justices of the peace, who shall make a report thereof to the justices at a special sessions for the highways; and such last-mentioned justices shall, by an order under their hands, fix the proportionate sum which shall be annually paid, or shall fix a certain sum to be paid by such person, bodies politic or corporate, his or their heirs, successors, or assigns, to the said surveyors of the parish, in lieu of thereafter repairing the said part of the said old highway; and the order of the said last-mentioned justices shall be and continue binding on all

such persons, bodies politic or corporate, their heirs, successors, or assigns; and in default of payment thereof, the said surveyor shall proceed for the recovery of the same, in the same manner as any penalties and forfeitures are recoverable under this Act. *Id. s.* 93.

6. *Stopping up or diverting Highways.*

Previous application to justices.] And when the inhabitants in vestry assembled shall deem it expedient that any highway should be stopped up, diverted, or turned, either entirely or reserving a bridleway or footway along the whole or any part or parts thereof, the chairman of such meeting shall, by an order in writing, direct the surveyor to apply to two justices to view the same, and shall authorize him to pay all the expenses attending such view, and the stopping up, diverting, or turning such highway, either entirely or subject to such reservation as aforesaid, out of the money received by him for the purposes of this Act: but if any other party shall be desirous of stopping up, diverting, or turning any highway as aforesaid, he shall, by a notice in writing, require the surveyor to give notice to the churchwardens to assemble the inhabitants in vestry, and to submit to them the wish of such person; and if such inhabitants shall agree to the proposal, the said surveyor shall apply to the justices as last aforesaid for the purposes aforesaid; and in such case the expenses aforesaid shall be paid to such surveyor by the said party, or be recoverable in the same manner as any forfeiture is recoverable under this Act; and the said surveyor is hereby required to make such application as aforesaid. *Id. s.* 84. As to the highways which may thus be stopped up or diverted, *see sect.* 93, *supra.*

Justices' view and certificate.] And when it shall appear upon such view of such two justices of the peace, [and which view must be had by them jointly, *R.* v. *JJ. of Cambridgeshire*, 4 *Ad.* & *El.* 111,] that any public highway may be diverted and turned, either entirely or subject as aforesaid, so as to make the same nearer or more commodious to the public, and the owner of the lands, through which such new highway shall be so proposed to be made, shall consent thereto by writing under his hand, or if it shall appear upon such view that any public highway is unnecessary, the said justices shall direct the surveyor to affix a notice in the form or to the effect of schedule (No. 19) to this Act annexed, in legible characters, at the place and by the side of each end of the said highway from whence the same is proposed to be turned, diverted, or stopped up, either entirely or subject as aforesaid, and also to

insert the same notice in one newspaper published or generally circulated in the county where such highway shall lie, for four successive weeks next after the said justices have viewed the same, and to affix a like notice on the door of the church of every parish in which such highway, or any part thereof, shall lie, on four successive Sundays next after the making such view; and the said several notices having been so published, and proof thereof having been given to the satisfaction of the said justices, and a plan having been delivered to them at the same time particularly describing the old and the proposed new highway, by metes, bounds and admeasurement thereof, (which plan shall be verified by some competent surveyor,) the said justices shall proceed to certify under their hands the fact of their having viewed the said highway as aforesaid, and that the proposed new highway is nearer or more commodious to the public; [*see R.* v. *Jones*, 12 *Ad.* & *El.* 684,] and if nearer, the said certificate shall state the number of yards or feet it is nearer, or if more commodious, the reasons why it is so; and if the highway is proposed to be stopped up as unnecessary, either entirely or subject as aforesaid, then the certificate shall state the reason why it is unnecessary; and the said certificate of the said justices, together with the proof and plan so laid before them as aforesaid, shall, as soon as conveniently may be after the making of the said certificate, be lodged with the clerk of the peace for the county in which the said highway is situated, and shall (at the quarter sessions which shall be holden for the limit within which such highway shall lie, next after the expiration of four weeks from the day of the said certificate of the said justices having been lodged with the clerk of the peace as aforesaid,) be read by the said clerk of the peace in open court; and the said certificate, together with the proof and plan aforesaid, as well as the consent in writing of the owner of the land through which the new highway is proposed to be made, shall be enrolled by the clerk of the peace amongst the records of the said court of quarter sessions: provided always, that any person whatever shall be at liberty, at any time previous to the said quarter sessions, to inspect the said certificate and plan so as aforesaid lodged with the said clerk of the peace, and to have a copy thereof, on payment to the clerk of the peace at the rate of sixpence *per* folio, and a reasonable compensation for the copy of the plan. *Id. s.* 85.

The following is the form of the consent of the land-owner:—

I, A. B. of ——, *in the county of* ——, *being the owner of the lands described in the plan hereunto annexed, through which part of a certain highway lying between* —— *and* ——, *is intended to be diverted and turned, in consideration of the sum of* ——, *to be paid to me for the said land and soil thereof, do*

hereby consent to the making and continuing such new highway through my said lands. Given under my hand this —— day of ——, one thousand eight hundred and ——.

The following is the form of the notice for diverting, &c.:—

Notice is hereby given, that on the —— day of —— next, application will be made to Her Majesty's justices of the peace assembled at quarter sessions in and for the county of ——, at ——, for an order for [if the order be for turning, diverting, and stopping up, &c. here state it, and describe the road ordered to be turned, diverted, and stopped up; if the order be for stopping up a useless road, here state it, and describe the road ordered to be stopped up;] *and that the certificate of two justices having viewed the same, &c., with the plan of the old and proposed new highway, will be lodged with the clerk of the peace for the said county on the —— day of —— next.*

A. B.
C. D. &c. } *Surveyor* [or *surveyors*] *of the parish of ——.*

Order, where there is more than one highway.] And where it is proposed to stop up or divert more than one highway, which highways shall be deemed to be so connected together as that they cannot be separately stopped or diverted without interfering one with the other, it shall be lawful to include such different highways in one order or certificate. *Id. s.* 86.

Appeal.] When any such certificate shall have been so given as aforesaid, it shall and may be lawful for any person, who may think that he would be injured or aggrieved if any such highway should be ordered to be diverted or turned or stopped up, either entirely or subject as aforesaid, and such new highway set out and appropriated in lieu thereof as aforesaid, or if any unnecessary highway should be ordered to be stopped up as aforesaid, to make his complaint thereof by appeal to the justices of the peace at the said quarter sessions, upon giving to the surveyor ten days' notice in writing of such appeal, together with a statement in writing of the grounds thereof, who is hereby required within forty-eight hours after the receipt of such notice, to deliver a copy of the same to the party by whom he was required to apply to the justices to view the said highway: provided that in all cases where the said surveyor shall have been directed by the inhabitants in vestry assembled to apply to such justices as aforesaid, then the said surveyor shall not be required to deliver a copy of such notice to any party; but it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid. *Id. s.* 88.

And in case of such appeal, the justices of the said quarter sessions shall,—for the purpose of determining whether the proposed new highway is nearer or more commodious to the public, or whether the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or whether the said party appealing would be injured or aggrieved,—impanel a jury of twelve disinterested men out of the persons returned to serve as jurymen at such quarter sessions; and if, after hearing the evidence produced before them, the said jury shall return a verdict that the proposed new highway is nearer or more commodious to the public, or that the public highway so intended to be stopped up, either entirely or subject as aforesaid, is unnecessary, or that the party appealing would not be injured or aggrieved, then the said court of quarter sessions shall dismiss such appeal, and make the order herein mentioned for diverting and turning and stopping up such highway either entirely or subject as aforesaid, or for diverting, turning and stopping up of such old highway, or for stopping up such unnecessary highway either entirely or subject as aforesaid; but if the said jury shall return a verdict that the proposed new highway is not nearer or not more commodious to the public, or that the highway so intended to be stopped up, either entirely or subject as aforesaid, is not unnecessary, or that the party appealing would be injured or aggrieved, then the said court of quarter sessions shall allow such appeal, and shall not make such order as aforesaid. *Id. s.* 89. Where, upon an appeal against a certificate of justices for stopping up a highway, it appeared that the justices had certified that the proposed line was nearer and more commodious than the old one, and the grounds of appeal were, that the proposed line was not nearer and more commodious,—a jury, being impanelled, as directed by the Act, found that the proposed new way was nearer, but not more commodious than the old one: the court held that upon this finding, the sessions could not make an order for stopping up the way; the justices having certified that the way was nearer *and* more commodious, both ought to have been proved upon the appeal. *R.* v. *Shiles et al.*, 10 *Law J.* 157, *m.*, 1 *Q. B.* 919.

In the event of any appeal being brought against the whole or any part of any order or certificate for diverting more highways than one, the court may decide upon the propriety of confirming the whole or any part of such order or certificate, without prejudice to the remaining part thereof. *Id. s.* 87.

And the court of quarter sessions is hereby authorized and required to award to the party giving or receiving notice of appeal, such costs and expenses as shall be incurred in prosecuting or resisting such appeal, whether the same shall be tried or not; and such costs and expenses shall be paid by the

surveyor or other party as aforesaid at whose instance the notice for diverting and turning or stopping up the highway shall have been given; and in case the said surveyor or other party as aforesaid shall not appear in support thereof, the said court of quarter sessions shall award the costs of the appellant to be paid by such surveyor or other party as aforesaid, and such costs shall be recoverable in the same manner as any penalties or forfeitures are recoverable under this Act. *Id. s.* 90. If the appellant in such an appeal be ordered to pay costs, his not paying them is not such an offence as renders the party liable to a summary conviction under the 103rd section of the Highway Act. *Selwood* v. *Mount et al.*, 10 *Law J.* 121, *m.*

Order of sessions.] But if no such appeal be made, or being made shall be dismissed as aforesaid, then the justices at the said quarter sessions shall make an order to divert and turn and stop such highway, either entirely or subject as aforesaid, or to divert, turn, and stop up such old highway, and to purchase the ground and soil for such new highway, or to stop up such unnecessary highway, either entirely or subject as aforesaid, by such ways and means, and subject to such exceptions and conditions in all respects, as in this Act is mentioned in regard to highways to be widened; and the proceedings thereupon shall be binding and conclusive on all persons whomsoever; and the new highways so to be appropriated and set out, shall be and for ever after continue a public highway to all intents and purposes whatsoever; but no old highway (except in the case of stopping up of such useless highway as herein is mentioned) shall be stopped, until such new highway shall be completed and put into good condition and repair, and so certified by two justices of the peace upon view thereof, which certificate shall be returned to the clerk of the peace, and by him enrolled amongst the records of the court of quarter sessions next after such order as aforesaid shall have been made pursuant to the directions hereinbefore contained. *Id. s.* 91.

Liability to repair the new way.] Where a highway shall have been turned or diverted under the provisions of this Act, the parish or other party which was liable to repair the old highway, shall be liable to the repair of the new highway, without any reference whatever to its parochial locality. *Id. s.* 92.

7. *Nuisances to Highways.*

Trees near the highway.] No tree, bush or shrub shall hereafter be planted on any carriageway or cartway, or within the distance of fifteen feet from the centre thereof, but the same shall respectively be cut down, grubbed up, and carried away by the owner or occupier of the land or soil, within twenty-one days after notice to him or his agent by the surveyor, on pain of forfeiting for every neglect the sum of ten shillings. *Id. s.* 64.

And where in this Act any matter or thing is directed or forbidden to be done within a certain distance of the centre of the highway, that portion of ground shall be deemed and taken to be the highway, which has been maintained by the surveyor as highway, and repaired with stones or other materials used in forming highways, for six months immediately preceding; and the centre of the highway shall be the middle of such highway, where a line being drawn along the highway, or a point marked, an equal number of feet of highway, which have been so maintained and repaired as aforesaid for twelve months before, shall be found on each side of such line or mark. *Id. s.* 63.

Hedges.] If the surveyor shall think that any carriageway or cartway is prejudiced by the shade of any hedges, or by any trees (except those trees planted for ornament, or for shelter to any hop-ground, house, building, court-yard, of the owner thereof,) growing in or near such hedges or other fences, and that the sun and wind are excluded from such highway, to the damage thereof,—or if any obstruction is caused in any carriageway or cartway by any hedge or tree,—it shall be lawful for any one justice of the peace on the application of the said surveyor, to summon the owner of the land on which such hedges or trees are growing to appear before the justices at a special sessions for the highways, to show cause why the said hedges are not cut, pruned, or plashed, or such trees not pruned or lopped, in such manner that the carriageway or cartway shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from the same to the damage thereof, or why the obstruction caused therein should not be removed; and the question as to the cutting, pruning, or plashing such hedges, or the pruning and lopping such trees, or the removal of such obstruction, shall, upon proof of the service of such summons, and whether the said owner attend or not, be determined at the discretion of such last-mentioned justices; and if such justices shall order and direct that such hedges shall be cut, pruned, or plashed, or such trees pruned or lopped, in manner aforesaid, or such obstruction removed, the said owner shall

comply therewith within ten days after a copy of such order shall have been left at the usual place of abode of the said owner or of his steward or agent, and in default thereof shall forfeit, on conviction, a sum not exceeding forty shillings; and the said surveyor, if the order of the said justices is not complied with, shall cut, prune, or plash such hedges, and prune and lop such trees, for the benefit and improvement of the highway, and remove such obstruction as aforesaid, to the best of his skill and judgment and according to the true intent and meaning of this Act: and the said surveyor shall be reimbursed by the owner as aforesaid what charges and expenses he shall be at in cutting, pruning, and plashing such hedges, and pruning and lopping such trees, and the removal of such obstruction, over and above the said forfeiture; and it shall and may be lawful for the justices at a special sessions for the highways, upon proof to them made upon oath, to levy as well the expenses of cutting, pruning, and plashing such hedges, or pruning and lopping such trees, or removal of such obstructions as aforesaid, as the several respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorized and directed to be levied by virtue of this Act. *Id. s.* 65. *See Brooke* v. v. *Jenney et al.*, 11 *Law J.* 10, *m.*, 13 *Id.* 376, *qb.*, 2 *Q. B.* 265.

But no person shall be compelled, nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of September, and the last day of March; and no person shall be obliged to fell any timber trees growing in hedges at any time whatsoever, except where the highways shall be ordered to be widened or enlarged as herein mentioned, or then to cut down or grub up any oak tree growing in such highway or in such hedges, except in the months of April, May, or June, or any ash, elm, or other trees in any other months than December, January, February or March. *Id. s.* 66.

Ditches.] The said surveyor, district surveyor, or assistant surveyor shall have power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses, and also to make and lay such trunks, tunnels, plats or bridges, as he shall deem necessary, in and through any lands adjoining or lying near to any highway, upon paying the owner or occupier of such lands (provided they are not waste or common,) for the damages which he shall sustain thereby, to be settled and paid in such manner as the damages for getting materials in inclosed lands or grounds are herein (*ante*, p. 638) directed to be settled and paid. *Id. s.* 67. *See Peters et al.* v. *Clarson et al.*, 13 *Law J.* 153, *m.*, 7 *Man.* & *Gr.* 548.

And if any owner, occupier, or other person shall alter, ob-

struct, or in any manner interfere with any such ditches, gutters, drains, or watercourses, trunks, tunnels, plats, or bridges, after they shall have been made by or taken under the charge of such surveyor, or district surveyor, and without his authority and consent, such owner, occupier, or other person shall be liable to reimburse all charges and expenses which may be occasioned by reinstating and making good the work so altered, obstructed, or interfered with, and shall also forfeit any sum not exceeding three times the amount of such charges and expenses. *Id. s.* 68.

Encroaching on the highways.] If any person shall encroach, by making or causing to be made any building, hedge, ditch, or other fence, on any carriageway or cartway, within the distance of fifteen feet from the centre thereof, every person so offending shall forfeit, on conviction, for every such offence, any sum not exceeding forty shillings; and the surveyor who hath the care of any such carriageway or cartway, shall cause such building, hedge, ditch, or fence to be taken down or filled up at the expense of the person to whom the same shall belong; and the justices, at a special sessions for the highways, upon proof to them made upon oath, shall levy as well the expenses of taking down such building, hedge, or fence, or filling up such ditch as aforesaid, as the several and respective penalties hereby imposed, by distress and sale of the offender's goods and chattels, in such manner as distresses and sales for forfeitures are authorised and directed to be levied by virtue of this Act. *Id. s.* 69.

Steam-engines, windmills, &c.] And it shall not be lawful for any person to sink any pit or shaft, or to erect or cause to be erected any steam-engine, gin or other like machine, or any machinery attached thereto, within the distance of twenty-five yards, nor any windmill within fifty yards, from any part of any carriageway or cartway, unless such pit or shaft or steam-engine, gin or other like engine or machinery, shall be within some house or other building, or behind some wall or fence sufficient to conceal or screen the same from the said carriageway or cartway, so that the same may not be dangerous to passengers, horses or cattle;—nor shall it be lawful for any person to make or cause to be made any fire for calcining or burning of ironstone, limestone, bricks, or clay, or the making of cokes, within the distance of fifteen yards from any part of the said carriageway or cartway, unless the same shall be within some house or other building, or behind some wall or fence, sufficient to screen the same from the same carriageway or cartway as aforesaid;—and in case any person shall offend in any of the cases aforesaid, every such person so offending shall forfeit and pay any sum not exceeding five pounds for each

and every day such pit, shaft, windmill, steam-engine, gin, machine, or fire shall be permitted to continue contrary to the provisions of this Act, which said penalties shall be levied, recovered and applied in such and the same manner as any penalty or forfeiture for any other offence on any highway may be levied, recovered, and applied: Provided that nothing herein contained shall be construed to restrain any person or persons from using, repairing, rebuilding, or enlarging any windmill, steam-engine, gin, or other like machine, or any kiln, or other erection used for the purpose of calcining or burning of iron-stone, limestone, bricks, or clay, or the making of cokes, which may have been erected and may be in existence at the passing of this Act. *Id. s.* 70.

Gates on railways.] Whenever a railroad shall cross a highway for carts or carriages, or turnpike road, the proprietors of the said railroad shall make and maintain good and sufficient gates at each of the said crossings, and shall employ good and proper persons to open and shut such gates, so that the persons, carts or carriages passing along such road shall not be exposed to any danger or damage by the passing of any carriages or engines along the said railroad; and any complaint for any neglect in respect of the said gates, shall be made, within one calendar month after the said neglect, to any justice, who may summon the party so complained against to appear before him at the next petty sessions, who shall hear and decide upon the said complaint, and the proprietor so offending shall forfeit any sum not exceeding five pounds, together with such costs, as to the said justice shall seem fit; 2 & 3 Vict. c. 45, s. 1; to be recovered and applied in like manner as penalties under stat. 5 & 6 W. 4, c. 50. *Id. s.* 45.

Riding on footpaths, injuring the road, making fires, &c.] If any person shall wilfully ride upon any footpath or causeway by the side of any road, made or set apart for the use or accommodation of foot passengers;—or shall wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle or carriage of any description, or any truck, or sledge, upon any such footpath or causeway;—or shall tether any horse, ass, mule, swine, or cattle on any highway, so as to suffer or permit the tethered animal to be thereon;—or shall cause any injury or damage to be done to the said highway, or the hedges, posts, rails, walls or fences thereof;—or shall wilfully obstruct the passage of any footway;—or wilfully destroy or injure the surface of any highway;—or shall wilfully or wantonly pull up, cut down, remove, or damage the posts, blocks, or stones fixed by the said surveyor as herein directed; or dig or cut down the banks, which are the securities and defence of the said highways;—or break, damage or throw down the stones, bricks or wood fixed upon

the parapets or battlements of bridges, or otherwise injure or deface the same;—or pull down, destroy, obliterate, or deface any milestone or post graduated or direction post or stone, erected upon any highway;—or shall play at foot-ball or any other game on any part of the said highways, to the annoyance of any passenger or passengers;—or if any hawker, higgler, gipsy, or other person travelling, shall pitch any tent, booth, stall, or stand, or encamp, upon any part of any highway;—or if any person shall make or assist in making any fire, or shall wantonly fire off any gun or pistol, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework, whatsoever, within fifty feet of the centre of such carriageway or cartway;—or bait, or run for the purpose of baiting, any bull upon or near any highway;—or shall lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon such highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon;—or shall suffer any filth, dirt, lime, or other offensive matter or thing whatsoever to run or flow into or upon any highway from any house, building, erection, lands, or premises adjacent thereto;—or shall in any way wilfully obstruct the free passage of any such highway:—every person so offending in any of the cases aforesaid, shall for each and every such offence forfeit and pay any sum not exceeding forty shillings, over and above the damages occasioned thereby. *Id. s.* 72.

Matters laid on highways.] And if any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever, shall be laid upon any highway, so as to be a nuisance, and shall not, after notice given by the surveyor, assistant surveyor, or district surveyor, be forthwith removed, it shall and may be lawful for the surveyor, assistant surveyor or district surveyor, by order in writing from any one justice, to clear the said highway, by removing the said stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or thing as aforesaid, and to dispose of the same, and to apply the proceeds arising therefrom towards the repairs of the highway within the parish in which such highway may be situate: Provided nevertheless, that if any soil, ashes or rubbish shall be laid on any highway, and such soil, ashes, or rubbish shall not be of sufficient value to defray the expense of removing them, the person who laid or deposited such soil, ashes or rubbish, shall repay to the said surveyor, assistant surveyor, or district surveyor the money which he shall have necessarily expended for the removal thereof, which money, in case the same shall not be forthwith repaid, shall be levied as forfeitures are herein directed to be levied. *Id. s.* 73. This section merely enables the surveyor, if he have the order of a

justice, to remove the nuisance; but it does not authorize the justice to convict or punish the surveyor for not removing it, in pursuance of the order. *Morgan* v. *Leach et al.*, 12 *Law J.* 4, *m*.

Cattle straying on highways.] And if any horse, ass, sheep, swine, or other beast or cattle of any kind, shall at any time be found wandering, straying, or lying, or being depastured, on any highway or on the sides thereof, without a keeper, (except on such parts of any road as lead or pass through or over any common or waste or uninclosed ground,)—any surveyor, or any other person authorized by him, is hereby required to seize and impound every such horse, ass, sheep, swine, or other beast or cattle, in the common pound (if any) of the parish where the same shall be found, or in such other place as the surveyor shall have provided or shall provide for that purpose, and the same there to detain, until the owner thereof shall, for every and each horse, ass, sheep, swine, or other beast or cattle so impounded, pay any sum not exceeding one shilling, together with reasonable charges and expenses (such charges to be settled by any two justices of the peace,) of impounding and keeping the same, to the surveyor of the parish in which the beast so impounded shall have been found, the said sum so paid for each beast to be applied to the repair of the said highway; and in case the said penalty, charges and expenses shall not be paid within five days after such impounding, (notice being thereof first given to the owner, if known at the time,) it shall and may be lawful for any two justices of the peace to order every such horse, ass, sheep, swine or other beast or cattle to be sold, except where it shall be made to appear to such justices that the same escaped from any inclosure by any gate or fence being wilfully or negligently left open or destroyed by any person not being owner of such inclosure, nor employed by such owner, or that it arose from accident, and was not wilful, in which case justices may remit the said penalty; and the money arising from such sale, after deducting the said penalty, and charges and expenses of impounding, keeping, and selling every such horse, ass, sheep, swine, or other beast or cattle shall be paid to the person whose property the same so sold shall appear to have been; and in case the owner thereof shall not be known, and no application shall be made for the money arising from such sale within one calendar month after such sale shall have taken place, the said money shall be applied, after deducting the said charges and expenses, in the same manner as the said penalty of one shilling is herein directed to be applied; but no owner of any horse, ass, sheep, swine, or other beast or cattle impounded as aforesaid, shall in any case pay more than the sum of twenty shillings, over and above the charges and expenses

of impounding and keeping the same, for any number of horses, asses, sheep, swine, or other beast or cattle impounded at one time: also nothing in this Act shall be deemed, taken, or construed to extend to take away any right of pasturage, which may exist on the sides of any highway. *Id. s.* 74.

And in case any person shall release or attempt to release any horse, ass, sheep, swine, or other beast, or cattle, which shall be seized for the purpose of being impounded under the authority of this Act, from the pound or place where the same shall be so impounded, or in the way to or from any such pound or place, or shall pull down, damage or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto or with which the same shall be fastened, or shall rescue or release, or attempt to rescue or release any distress or levy which shall be made under the authority of this Act, until or before such horse, ass, sheep, swine, or other beast or cattle seized or so impounded, or such distress, or levy so made, shall be discharged by due course of law: every person so offending shall, upon conviction thereof before any two of his Majesty's justices of the peace, forfeit and pay any sum not exceeding twenty pounds, and in default thereof be committed by such justices, by warrant under their hands and seals, to the house of correction of the county wherein the said offence shall have been committed, there to be kept to hard labour for any time not exceeding three calendar months. *Id. s.* 75.

As to impounding cattle, sheep and swine grazing upon roads or ways set out under the General Inclosure Act, *see stat.* 8 & 9 *Vict. c.* 118, *s.* 100.

Nuisances at common law.] Any obstruction of a common highway, as by erecting a gate across it, locking a gate already erected, digging a ditch, or making a hedge across it, laying logs of timber on it, or injuring it in any way, or doing any other act by which it is rendered less commodious to the Queen's subjects, — is a public nuisance at common law, 1 *Hawk. c.* 76, *ss.* 144, 146, and is a misdemeanor, indictable and punishable with fine or imprisonment, or both. *See Arch. Sess. Pr.* 212, *and the cases there mentioned, and see R.* v. *Bottfield, Car. & M.* 151. A public navigable river is also deemed a public highway; and any obstruction of it is a public nuisance, in like manner as in the case of a highway on land. *Arch. Sess. Pr.* 213, *and see the cases there mentioned.*

8. *Regulations as to Waggons, Drivers, &c.*

Names on waggons.] The owner of every waggon, cart, or

other such carriage, shall paint or cause to be painted in one or more straight line or lines, upon some conspicuous part of the right or off side of his waggon, cart, or other such carriage, or upon the off side-shafts thereof, before the same shall be used on any highway, his Christian name and surname, or the style and title by which he is commonly designated, and the place of his trade or abode, or the Christian and surname and place of trade or abode of a partner or owner thereof, at full length, in large legible letters in white upon black or black upon white, not less than one inch in height, and continue the same thereupon so long as such waggon, cart, or other such carriage shall be used upon any highway; and every owner of any waggon, cart, or other such carriage who shall use or allow the same to be used on any highway without the name and descriptions painted thereon as aforesaid, or who shall suffer the same to become illegible, or who shall paint or cause to be painted any false or fictitious name or place of trade or abode on such waggon or cart or other such carriage, shall forfeit and pay, on conviction, for every such offence, a sum not exceeding forty shillings, with or without costs, as the justices before whom the conviction shall take place shall think fit. *Id. s.* 76.

Drivers.] No one person shall act as driver of more than two carts, waggons or other such carriages on any highway: but any one person may act as the driver of two carts, waggons, or other such carriages on any highway, and for such carts to pass and travel on any highway being only under the care and superintendence of such single person,—provided that such carts, waggons, or other carriages, when under the care of only one person, shall not be drawn by more than one horse each, and the horse on the hinder cart or waggon or other carriage shall be attached by a rein in length not exceeding four feet to the back of the cart, waggon, or other carriage which shall be foremost; and in case the said horse shall not be so attached, the driver of the said carts, waggons, or other carriages, shall forfeit, on conviction, the sum of twenty shillings, to be recovered as other penalties are by this Act to be recovered. *Id. s.* 77.

Misbehaviour of drivers.] And if the driver of any waggon, cart, or other carriage of any kind, shall ride upon any such carriage, or upon any horse or horses drawing the same, on any highway, not having some other person on foot or on horseback to guide the same (such carriages and carts as are driven with reins, and are conducted by some person holding the reins of all the horses drawing the same, excepted,)—or if the driver of any carriage whatsoever on any part of any highway, shall by negligence or wilful misbehaviour cause any hurt

or damage to any person, horse, cattle, or goods conveyed in any carriage, passing or being upon such highway,—or shall quit the same, and go on the other side of the hedge or fence inclosing the same,—or negligently or wilfully be at such distance from such carriage, or in such a situation whilst it shall be passing upon such highway that he cannot have the direction and government of the horses or cattle drawing the same,—or shall leave any cart or carriage on such highway so as to obstruct the passage thereof;—or if any person shall drive or act as the driver of any waggon, cart, or other such carriage not having the owner's name as hereby required painted and remaining legible thereon, and shall refuse to tell or to discover the true Christian and surname of the owner or principal owners of such waggon, cart, or carriage;—or if the driver of any waggon, cart, or other carriage whatsoever, or of any horses, mules, or other beasts of draught or burden, meeting any other waggon, cart, or other carriage or horses, mules, or other beasts of burden, shall not keep his waggon, cart, or carriage, or horses, mules, or other beasts of burden on the left or near side of the road;—or if any person shall in any manner wilfully prevent any other person from passing him, or any waggon, cart, or other carriage, or horses, mules, or other beasts of burden under his care upon such highway,—or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any person, waggon, cart, or other carriage, or horses, mules, or other beasts of burden on any highway,—or shall not keep his waggon, cart, or other carriage, or horses, mules, or other beasts of burden on the left or near side of the road, for the purposes of allowing such passage;—or if any person riding on any horse or beast, or driving any sort of carriage, shall ride or drive the same furiously, so as to endanger the life or limb of any passenger:—every person so offending in any of the cases aforesaid, and being convicted of any such offence, either by his own confession, the view of a justice, or by the oath of one or more credible witnesses, before any two justices of the peace, shall, in addition to any civil action to which he may make himself liable, for every such offence forfeit any sum not exceeding five pounds in case such driver shall not be the owner of such waggon, cart, or other carriage, and in case the offender be the owner of such cart, waggon, or other carriage, then any sum not exceeding ten pounds, and in either of the said cases shall, in default of payment, be committed to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding six weeks, unless such forfeiture shall be sooner paid;—and every such driver offending in either of the said cases, shall and may, by the authority of this Act, with or without any warrant, be apprehended by any person who shall see such offence committed, and shall be conveyed before

any justice of the peace, to be dealt with according to law; and if any such driver in any of the cases aforesaid shall refuse to discover his name, it shall and may be lawful for the said justice of the peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding three months, or to proceed against him for the penalty aforesaid by a description of his person and the offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name. *Id. s.* 78.

9. *Proceedings for Penalties, &c.*

Securing unknown offenders.] Whereas offences may be committed against this Act by persons whose names are unknown to the surveyor, assistant surveyor, or district surveyor: be it therefore enacted, that it shall be lawful for the surveyor, assistant surveyor, or district surveyor, or any person acting under his authority, and such other person witnessing the commission of the offence, without any other authority than this Act, to seize and detain such unknown person who shall commit any such offence, and take him forthwith before any justice of the peace, who shall proceed and act with respect to such offence according to the provisions of this Act. *Id. s.* 79.

Summons, information, &c.] Where any penalty or forfeiture is recoverable before justices of the peace under this Act, any justice to whom complaint shall be made of any such offence, may summon the party complained against before any two justices, and on such summons the said two justices may hear and determine the matter, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such justice. *Id. s.* 101.

The following is the form of the summons:

To A. B.

(to wit.) } *Whereas complaint and information hath been made upon oath before me, C. D., one of Her Majesty's justices of the peace for the said* [*county, &c.*] *by E. F. of —— that, &c.* [here state the nature and circumstances of the case, as far as it shall be necessary to show the offence, and to bring it within the authority of the justice; and, in doing that, follow the words of the Act as near as may be]: *these are therefore to require you personally to appear before me* [*or the justices to be assembled at their petty sessions* (or *special sessions*

for the highways) to be holden at —— in the said county, &c.] on the —— day of —— next, at the hour of —— in the —— noon, to answer to the said complaint and information made by the said E. F., who is likewise directed to be then and there present to make good the same. Herein fail not.

Given under my hand this —— day of ——.

The following may be the form of the information :—

(to wit.) } *Be it remembered that on the —— day of —— A. B. of —— in the said county, informeth and maketh oath before me —— one of Her Majesty's justices of the peace for the said county, that —— of —— in the said county,* [here describe the offence, with the time and place, and follow the words of the Act as near as may be,] *contrary to the statute in the fifth and sixth year of the reign of His late Majesty King William the Fourth, intituled, "An Act," &c.* [here set out title of Act, as ante, p. 645, n.] *which hath imposed a forfeiture —— for the said offence.*

Taken and sworn the —— day of —— before me A. B.

The following is the form of the conviction :—

(to wit) } *Be it remembered that on the —— day of —— in the year of our Lord —— at —— in the county aforesaid, A. B. came before us —— of Her Majesty's justices of the peace for the said county, and informed us that E. F. of —— on the —— day of —— now last past, at —— in the said county, did* [set forth the fact in the manner described by the Act] ; *whereupon the said E. F., after being duly summoned to answer the said charge, appeared before us, —— on the —— day of —— in the said county, and, having heard the charge alleged against him, declared that he was not guilty of the said offence ; but the same being fully proved upon the oath of G. H. a credible witness, it manifestly appears to us the said justices, that the said E. F. is guilty of the offence charged upon him in the said information : it is therefore considered and adjudged by us the said justices, that the said E. F. be convicted, and we do hereby convict him of the offence aforesaid ; and we do hereby declare and adjudge that the said E. F. hath forfeited the sum of —— of lawful money of Great Britain, for the offence aforesaid, to be distributed as the law directs, according to the form of the statute in that case made and provided. Given, &c.*

[After the words, "*being duly summoned to answer the said charge,*" insert "*did not appear before us pursuant to the said summons,*" or "*did neglect and refuse to make any defence against the said charge ; but the same being fully proved,* &c. as before.]

[After the words "*charge alleged against him,*" insert "*acknowledged and voluntarily confessed the same to be true,*"

and it manifestly appears to us the said justices, &c., as above.]

Witnesses.] If any person, after being paid or tendered a reasonable sum of money for his costs, charges and expenses, shall be summoned as a witness to give evidence before any justices of the peace touching any matter or fact contained in any information for an offence against this Act, either on the part of the prosecutor or person accused, and shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his refusal or neglect, —or appearing shall (after having been paid or tendered a reasonable sum for his costs, charges, and expenses,) refuse to be examined upon oath and give evidence: such person shall forfeit for every such offence, any sum not exceeding five pounds. *Id. s.* 102.

Penalties, &c. how levied.] All penalties and forfeitures by this Act inflicted, and all balances due from a surveyor, and all costs and charges to be allowed and ordered by the authority of this Act, (the manner of levying, recovering, and applying of which is not hereby otherwise particularly directed,) shall, upon proof and conviction of the offences respectively before any two or more justices, or upon order made as aforesaid, be levied, together with the costs attending the information, summons, and conviction, by distress and sale of the goods and chattels of the person ordered to pay the same, by warrant under the hands of two or more justices before whom the party may have been convicted; and if such fines, penalties and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such justices as aforesaid to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security, by way of recognizance or otherwise, to the satisfaction of such justices, for his or their appearance before them on such day as shall be appointed for the return of such warrant of distress, such day not being later than seven days from the time of taking such security, or in case it shall appear to the satisfaction of such justices, either by the confession of the offender or otherwise, that he hath not goods or chattels within the jurisdiction of such justices sufficient whereon to levy all such penalties, &c., such justices may at their discretion, without issuing any warrant of distress, commit the offender for such period of time, and in such and like manner, as if a warrant of distress had been issued, and *nulla bona* returned thereon; but if a warrant of distress shall be issued, and upon the return thereof it shall appear that no sufficient

distress can be had whereon to levy the said penalty, &c. and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such justices, upon the confession of the offender, or otherwise, that he hath not sufficient goods and chattels whereupon such penalty, &c. could be levied if a warrant of distress were issued, such justices shall not be required to issue such warrant, but in such case such justices shall, by warrant under their hands, cause such offender or offenders to be committed to the common gaol or house of correction of the county, riding, or place where the offender shall be or reside, there to be kept to hard labour, for any term not exceeding three calendar months, unless such penalties, &c. shall be sooner paid and satisfied; and the penalties and forfeitures, when so levied, shall be paid, the one half to the informer, and the other half to the surveyor of the parish where such offence shall happen, to be applied towards the repair of the highways thereof, unless otherwise directed by this Act; but in case the surveyor shall be the informer, then the whole shall be applied towards the repair of such highway. *Id. s.* 103. Where, upon an appeal against a certificate of justices for stopping up a highway, the sessions award costs, the not paying those costs is not an offence within the meaning of this section, so as to authorize two justices to convict the party. *Selwood* v. *Mount et al.*, 10 *Law J.* 121, *m.*

The following is the form of the warrant of distress, &c.:—

Warrant to distrain for the forfeiture.

(to wit.) } *To the constable* [*headborough* or *tithingman*] *of* ——. *Whereas A. B. of* —— *in the said county* [*yeoman*, &c.] *is this day convicted before us, two of Her Majesty's justices of the peace in and for the said county, upon the oath of G. H. a credible witness, for that the said A. B. hath* [here set forth the offence, describing it particularly in the words of the Act, as near as may be], *contrary to the statute in that case made and provided; by reason whereof the said A. B. hath forfeited the sum of* ——, *to be distributed as herein is mentioned, which he hath refused to pay: these are therefore in Her Majesty's name to command you to levy the said sum of* —— *by distress of the goods and chattels of him the said A. B. and if within the space of four days next after such distress by you taken, the said sum of* —— *together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do pay one half of the said sum of* —— *to E. F. of* —— *who*

informed me of the offence, and the other half of the said sum of —— to I. K. the surveyor of the parish [*township* or *place*] *where the said offence* [*neglect* or *default*] *happened, to be employed towards the repair of the said highways, returning the overplus, upon demand, to him the said A. B., the reasonable charges of taking, keeping, and selling the said distress being first deducted; and if sufficient distress cannot be found of the goods and chattels of the said A. B. whereon to levy the said sum of ——, that then you certify the same to us, together with this warrant. Given under our hands the —— day of ——.*

C. D.
E. F.

Return of the constable to be made upon the warrant of distress, when there are no effects.

I, A. B., constable of the [*parish, &c.*] *of —— in the county of —— do hereby certify and make oath, that by virtue of this warrant I have made diligent search for the goods of the within-named ——, and that I can find no sufficient goods whereon to levy the within sum of ——. As witness my hand the —— day of ——.*

Sworn before me the day and year, &c. A. B.
C. D.

Commitment for want of distress.

(to wit.) } *To the* [*constable*] *of ——, in the said county, and to the keeper of the common gaol* [or *house of correction*] *at ——, in the said county. Whereas A. B. of ——, in the said county, yeoman, was on the —— day of —— convicted before us, two of Her Majesty's justices of the peace in and for the said county, upon the oath of E. F. a credible witness, for that he the said A. B.* [here set forth the offence], *contrary to the statute made in the fifth and sixth years of the reign of King William the Fourth, intituled "An Act,"* [here set out title of Act, as ante, p. 645, n.] *by reason whereof the said A. B. hath forfeited the sum of ——: and whereas on the —— day of ——, in the year aforesaid we did issue our warrant to the* [*constable*] *of ——, to levy the said sum of —— by distress and sale of the goods and chattels of him the said A. B., and to distribute the same according to the directions of the said statute: and whereas it duly appears to us upon the oath of the said* [*constable*] *that the said* [*constable*] *hath used his best endeavours to levy the said sum on the goods and chattels of the said A. B.*

as aforesaid, but that no sufficient distress can be had whereon to levy the same: these are therefore to command you the said [*constable*] *of —— aforesaid, to apprehend the said A. B., and him safely convey to the common gaol* [or *house of correction*] *at —— in the said county, and there deliver him to the keeper thereof, together with this precept: and we do hereby also command you the said keeper to receive and keep in your custody, and to keep to hard labour, the said A. B., for the space of ——, unless the said sum shall sooner be paid, pursuant to the said conviction and warrant; and for so doing this shall be your sufficient warrant. Given under our hands the —— day of ——, in the year of our Lord ——.*

C. D.
E. F.

Appeal.] If any person shall think himself aggrieved by any rate made under or in pursuance of this Act, or by any order, conviction, judgment, or determination made, or by any matter or thing done, by any justice or other person, in pursuance of this Act, and for which no particular method of relief hath been already appointed, such person may appeal to the justices at the next general or quarter sessions of the peace to be held for the county, division, riding or place wherein the cause of such complaint shall arise,—such appellant first giving to the surveyor or to such justice or other person by whose act such person shall think himself aggrieved, notice in writing of his intention to bring such appeal, together with a statement in writing of the grounds of such appeal, within fourteen days after such rate shall be made or cause of complaint shall arise, —and within four days after such notice, entering into a recognizance before some justice, with two sufficient sureties, conditioned to try such appeal at, or abide the order of, and pay such costs as shall be awarded by the justices at such general or quarter sessions; and such justices, upon hearing and finally determining the matter of such appeal, may, according to their discretion, award such costs to the party appealing or appealed against, as they shall think proper: but in case there shall not be time to give such notice and enter into such recognizance before the next sessions, then such appeal may be made to the next following sessions, and shall be then heard and determined: provided also, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into evidence of any other grounds of appeal than those set forth in such statement. *Id. s.* 105. The notice of appeal in this case must be given to each of the convicting justices: it is not sufficient to give it to the surveyors who were the prosecutors. *R.* v. *JJ. of Bedfordshire*, 11 *Ad.* & *El.* 134, 9 *Law*

J. 8, *m.* But personal service is not necessary. *R.* v. *JJ. of Yorkshire*, 14 *Law J.* 91, *m.*

And in all cases of appeal against the rate made in pursuance of this Act, the several provisions and enactments contained in stat. 41 G. 3, c. 23, relative to poor rates, shall be applicable thereto, as if the same had been repeated and re-enacted in this Act. *Id. s.* 106.

But no rate, nor any proceeding to be had touching the conviction of any offender against this Act, or any order made, or any other matter or thing done or transacted in or relative to the execution of this Act, shall be vacated or quashed for want of form, or be removable (except as herein mentioned) by *certiorari*, or any other writ or process whatsoever, into any of His Majesty's courts of record at Westminster. *Id. s.* 107.

Special case.] In any case of appeal, however, the court of quarter sessions may, if they think fit, state the facts specially for the determination of the court of King's Bench thereon, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or otherwise, into the said court of King's Bench. *Id. s.* 108.

Fees of clerks of the peace, clerks to justices, &c.] The several fees hereafter limited and expressed, and no others, shall be taken by the clerk of the peace, clerk to the justices, or others, for their several respective services in the execution of this Act; (that is to say,) the sum of 6*d.* for every information; the sum of 1*s.* for every summons or warrant, and 6*d.* for the service thereof; the sum of 6*d.* for every notice, and 6*d.* for the service thereof; the sum of 1*s.* for every order, and 6*d.* for the service thereof; the sum of 2*s.* for every warrant of distress; the sum of 1*s.* for every appointment; and the sum of 2*s.* for every conviction: provided always, that in no place regulated by a local Act of Parliament, when the amount of the fees to be taken by the clerk to the justices, or others, in any proceeding for the recovery of any rate shall be less than the fees herein-before mentioned, shall it be lawful for such clerk to the justices or others to demand or take a greater fee for any similar proceeding under this Act than the fee which may be mentioned or directed to be taken by such local Act. *Id. s.* 110.

Actions against justices, &c.] No action shall be commenced against any person, for any thing done in pursuance of or under the authority of this Act, until twenty-one days' notice has been given thereof in writing to the justice, surveyor, or person against whom such action is intended to be brought;

nor after sufficient satisfaction or tender of satisfaction has been made to the party aggrieved, nor after three calendar months next after the fact committed for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and the defendant in such action or suit may plead the general issue, and give this Act and every special matter in evidence at the trial; and if the matter or thing shall appear to have been done under or by virtue of this Act, or if it shall appear that such action or suit was brought before twenty-one days' notice thereof given as aforesaid, or that sufficient satisfaction was made or tendered as aforesaid, or if any action or suit shall not be commenced within the time before limited, or shall be laid in any other county than as aforesaid, then the jury shall find a verdict for the defendant therein; and if a verdict shall be found for such defendant, or if the plaintiff be nonsuit, or discontinue, or if upon demurrer judgment shall be given for the defendant, such defendant shall have costs as between attorney and client, and shall have such remedy for recovering the same as any defendant may have for his or her costs in any case by law. *Id. s.* 109. *See Peters et al.* v. *Clarson et al.*, 13 *Law J.* 153, *m.*, 7 *Man. & Gr.* 548. *Davis* v. *Curling*, 15 *Law J.* 56, *qb.*

HIGHWAYS (*Turnpike Roads.*)

Besides the local Acts of Parliament, under which most of the turnpike roads throughout England have respectively been made and are managed, there are a few public and general Acts (3 *Geo.* 4, *c.* 126, 4 *G.* 4, *c.* 95, *&c.*), applicable to all, the several provisions of which, as far at least as they relate at all to the duties of a justice of peace we shall notice under this head. These Acts, however, do not extend to the Commercial road, or the several branches leading out of the same; 3 *G.* 4, *c.* 126, *s.* 149; or to the road from Shrewsbury to Bangor Ferry, or from London to Bangor by Shrewsbury, or from London to Holyhead by Chester; 4 *G.* 4, *c.* 95, *s.* 91; or the road from Carlisle to Glasgow. 3 *G.* 4, *c.* 126, *s.* 150. 9 *G.* 4, *c.* 77, *s.* 20. By 3 G. 4, c. 126, all former general Acts upon the subject are repealed. *Id. ss.* 1, 2, 3. It may be useful also to remark, that all Acts relating to turnpike roads, expiring in 1839, or afterwards, have been continued by various statutes, and lastly by stat. 8 & 9 Vict. c. 59, until the 1st October, 1846, and thence to the end of the then next session of parliament. As to what may be deemed a turnpike road,

see Northern Bridge v. *London and Southampton Railway*, 9 *Law J.* 165, *ex.*

I propose to arrange the different sections of the statute, under the following heads:—

1. *Trustees*, p. 669.
2. *Making and repairing roads*, p. 669.
3. *Gates, toll houses, &c.*, p. 674.
4. *Tolls*, p. 678.
5. *Mile stones and direction posts, &c.*, p. 691.
6. *Regulations as to waggons, &c.*, p. 691.
7. *Regulations as to drivers, &c.*, p. 694.
8. *Nuisances*, p. 696.
9. *Prosecutions for penalties, &c.*, p. 700.

1. *Trustees.*

Justices to be.] Besides the trustees or commissioners appointed by and under each particular turnpike Act, it is enacted by stat. 3 G. 4, c. 126, s. 61, that all justices of the peace for the time being, acting for the county [riding, division or soke, 5 *G.* 4, *c.* 69], through which any turnpike road shall pass, shall be added to and joined with the trustees or commissioners for making, repairing, or maintaining every such turnpike road, and shall have all the same powers and authorities, to all intents and purposes, as if the said justices had severally been named or elected trustees or commissioners in or under any Act or Acts of Parliament under which such roads shall be made, repaired, or maintained. 3 *G.* 4, *c.* 126, *s.* 61. It is not necessary that they should take the oath of qualification, required of other trustees or commissioners. 4 *G.* 4, *c.* 95, *s.* 34.

2. *Making and repairing Roads.*

By the trustees or commissioners.] The stat. 4 G. 4, c. 95, enabled the trustees or commissioners of a turnpike road to exact statute labour from all persons compellable by the laws then in force to render it, and to compound for the same; *Id.* *s.* 80; but as a compliance with these sections was enforced by penalties under statutes which have since been repealed, these sections also may be deemed to be virtually repealed, and that statute labour can no longer be exacted. *See* 2 & 3 *Vict.* *c.* 81, *s.* 1.

Where individuals are bound by tenure to repair any part of the road, they may contract with the trustees or commissioners to repair it. 3 *G.* 4, *c.* 126, *s.* 106.

Also, the trustees or commissioners may contract with others for the making, repairing, altering, &c. the road, or any bridges, toll-houses or buildings thereon. 2 & 3 *Vict. c.* 81, *s.* 78.

It may be necessary to mention that the court of Queen's Bench will not interfere, by mandamus, to compel the trustees or commissioners to repair a turnpike road. *R.* v. *Trustees of Witney Roads*, 12 *Ad.* & *El.* 427.

Holes or pits made in getting materials.] The stat. 3 G. 4, c. 126, provides for the procuring of materials, out of rivers, waste lands, &c.; *ss.* 97, 98, 100—103; and if any surveyor of any turnpike road, or any person employed by him, shall by reason of the searching for, digging, or getting any gravel, sand, stones, chalk, clay, or other materials for repairing any highways, make or cause to be made any pit or hole in any common or other lands, rivers or brooks, wherein such materials shall be found, the said surveyor shall forthwith cause the same to be sufficiently fenced off, and such fence supported and repaired, during such time as the said pit or hole shall continue open, and shall, within three days after such pit or hole shall be opened or made, where no gravel, stones, or materials shall be found, cause the same forthwith to be filled up, levelled, and covered with the turf or clod which was dug out of the same, and where any such materials shall be found, within fourteen days after having dug up sufficient materials in such pit or hole, if the same is not likely to be further useful, cause the same to be filled up, sloped down, or fenced off, and so continued; and if the same is likely to be further useful, the said surveyor shall secure the same by posts and rails, or other fences, to prevent accidents to persons or cattle; and in case such surveyor shall neglect to fill up, slope down or fence off such pit or hole in manner and within the time aforesaid, he shall forfeit the sum of twenty shillings for every such default; and in case such surveyor shall neglect to fence off such pit or hole, or to slope down the same as hereinbefore directed, for the space of six days after he or they shall have received notice for either of those purposes from any justice of the peace, or from the owner or occupier of such several ground, river, or brook, or any person having right of common within such common or waste lands as aforesaid, and such neglect and notice shall be proved upon oath before one or more of the said justices of the peace, such surveyor shall forfeit and pay any sum not exceeding ten pounds nor less than forty shillings for every such neglect, to be determined and adjudged by such justice or justices, and to be laid out and applied in the fencing off, filling up, or sloping down such pit or hole, in such manner as the said justice or justices shall direct and appoint; which forfeiture, in case the same be

not forthwith paid, shall be levied as other forfeitures are hereinafter directed to be levied. *Id. s.* 99.

Repairs by parishes.] Although the trustees or commissioners of a turnpike road, are *primâ facie* liable to repair it, yet if it be out of repair, the parish in which it is situate, or the township, if the township be liable by prescription to repair all roads within it, may be indicted for the non-repair of it; for the tolls received upon the road are deemed an auxiliary fund merely, and do not relieve the parish, &c. of its liability. *R.* v. *Netherthong*, 2 *B.* & *A.* 179.

And by stat. 4 & 5 Vict. c. 59, [*continued until* 1*st Oct.*, 1846, *and from thence to the end of the then next session, by stat.* 8 *&* 9 *Vict. c.* 59,] the justices at any special sessions for the highways, upon information exhibited before them by the clerk or treasurer of any turnpike trust, that the funds of the said trust are insufficient for the repairs of the turnpike roads within any parish [township, &c.], (notice in writing of such intended information having been previously given on the part of such clerk or treasurer to the parish surveyor twenty-one days at least before such special sessions,) may examine the state of the revenues and debts of such turnpike trusts, and inquire into the state and condition of the repairs of the roads within the same, and also ascertain the length of the roads, including turnpike roads, within such parish, and how much of such road is turnpike road; and if after such examination it shall appear to the said justices necessary or expedient, for the purposes of any turnpike road, so to do, then they may adjudge and order what portion, if any, of the rate or assessment levied or to be levied by virtue of stat. 5 & 6 W. 4, c. 50, shall be paid by the said parish surveyor, and at what time or times, to the said commissioners or trustees, or to their treasurer or other officers appointed by them on that behalf,—such money to be wholly laid out in the actual repairs of such part of such turnpike road as lies within the parish from which it was received.—*Sect.* 1. Where the funds, which would otherwise be sufficient for the repair of the turnpike road, were exhausted by paying the interest on a debt secured upon the tolls, the court held that in such a case the justices had the power to make an order under this Act. *R.* v. *White*, 4 *Q. B.* 101. 12 *Law J.* 31, *m.* In an order under this section, it must appear on the face of it that it was made at a special sessions of the highways for the division within which the turnpike road is situate. *R.* v. *Morice et al.*, 14 *Law J.* 75, *m.*

And if any such parish surveyor shall refuse or neglect to pay over such portion of the said rate or assessment, at the time or times and in the manner mentioned in the order of the said justices, the same shall and may be levied upon the goods and chattels of such surveyor, in such manner as penal-

ties and forfeitures are by stat. 5 & 6 W. 4, c. 50, authorized to be levied. *Id. s.* 2.

If any person shall think himself aggrieved by any order, judgment, or determination made, or by any matter or thing done, by any justices of the peace at any such special sessions, in pursuance of this Act, such person shall be at liberty to make his complaint thereof by appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, riding, division, or place wherein the cause of such complaint shall arise, such applicant first giving to such justices ten days' notice in writing of the grounds of such appeal within six days after such order, judgment, or determination shall be so made or given as aforesaid, [*see R.* v. *JJ. of Derbyshire*, 14 *Law J.* 84,] who are hereby required, within forty eight hours after the receipt of such notice, to return all proceedings whatever had before them respectively, touching the matter of such appeal, to the said justices at the general quarter sessions aforesaid; and that in case of such appeal, the said justices at the said quarter sessions, upon due proof of such notice and statement having been given as aforesaid, shall hear and determine such appeal; and the said justices at the said quarter sessions shall have power to award such costs to the parties appealing or appealed against, as they the said justices shall think proper, such costs to be levied and recovered in the same manner as any penalties or forfeitures are recoverable under the said recited Act; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form: provided always, that in case there shall not be time to give such notice as aforesaid before the next sessions to be holden after such order, determination or judgment, then and in every such case such appeal may be made to the justices at the next following sessions, who shall proceed to determine such appeal in manner as aforesaid: provided always, that it shall not be lawful for the appellant to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid, nor on the hearing of such appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement as aforesaid. *Id. s.* 3. Upon an appeal under this Act, a justice who is a trustee of the turnpike, cannot vote. *R.* v. *JJ. of Hertfordshire*, 14 *Law J.* 176, *qb.*

Also by stat. 3 G. 4, c. 126, s. 110, when the inhabitants of any parish, township, or place shall be indicted for not repairing any highway, being turnpike road, and the court before whom such indictment shall be preferred shall impose a fine for the repair of such road, such fine shall be apportioned, together with the costs and charges attending the same, between the inhabitants of such parish, township, or place, and the trustees or commissioners of such turnpike road, in such

manner as the said court, upon consideration of the circumstances of the case, shall deem just; and it shall and may be lawful for such court to order the treasurer of such turnpike road to pay the sum so proportioned for such turnpike road, out of the money then in his hands or next to be received by him, in case it shall appear to such court, from the circumstances of such turnpike debts and revenues, that the same may be paid without endangering the securities of the creditors who have advanced their money upon the credit of the tolls to be raised thereupon; which order shall be binding upon such treasurer, and he is hereby authorized and required to obey the same.

Repairs by individuals, &c.] We have seen, *ante*, p. 628, that individuals and corporations may be liable to repair a highway. And they continue liable, although the highway become a turnpike road. *See R.* v. *Netherthong*, *ante*, p. 671. By stat. 4 G. 4, c. 95, s. 68, reciting that doubts had arisen and might arise whether any body politic or corporate, or any particular person or persons liable to repair, by tenure or otherwise, any old turnpike road, or part of such road, widened, altered, diverted, or turned, ought to repair or contribute to the repair of the whole or any part or proportion of the new road set out in lieu of the old turnpike road: for obviating such doubts, and preventing disputes about the same, it was enacted, that all and every body politic or corporate, and person and persons, who was, were, or shall be liable as aforesaid to the repair of any old turnpike road which has been since the passing of the said recited Act, or shall be, widened, altered, diverted, or turned, shall respectively be and continue in the same manner liable to the repair of such new road set out in lieu of the old road, or so much thereof as shall be equal to the burthen and expense of repairing such old road, from which he, she, or they shall be exonerated by the widening, altering, diverting, or turning thereof; and if the several parties interested therein cannot agree, the same shall be viewed by two justices of the peace of the county where such road shall be, and shall be settled, adjusted, and determined by them in such manner as they shall think just and reasonable; and from and after such determination of the justices, the body politic or corporate, and person or persons liable to repair such new road as aforesaid, shall bear all charges of presentments, indictments, and prosecutions for not repairing the same; and if it shall be found more convenient to fix a gross sum or an annual sum, to be paid by any such body politic or corporate, or person or persons, instead of fixing the part or proportion of such new road to be repaired by him, her, or them, the said justices may, with the consent of such person or persons, and also of the trustees or commissioners of the road, obtained at a meet-

ing of such trustees or commissioners, order and direct the same accordingly; and the order and direction of the said justices shall be final and conclusive, and shall continue binding on all bodies politic or corporate and persons whomsoever. 4 *G.* 4, *c.* 95, *s.* 68. This section has been holden to extend to the case of parishes disputing their liability. *R.* v. *Barton*, 9 *Law J.* 23, *m.*, 11 *Ad.* & *El.* 343.

Altering or diverting roads.] The trustees or commissioners of a turnpike road are also empowered, from time to time, to divert, alter, shorten, and improve the course or path of it, 9 *G.* 4, *c.* 77, *s.* 9, with liberty to purchase lands for the purpose, 3 *G.* 4, *c.* 126, *ss.* 84, 95, with certain restrictions as to dwelling-houses, and as to enclosed lands more than 100 yards from the present line of road. 4 *G.* 4, *c.* 95, *ss.* 64, 65.

3. *Gates, Toll Houses, &c.*

Where and in what cases.] The local Act of Parliament, by which each turnpike road is regulated, usually states where turnpike gates and toll houses shall be erected, or gives the trustees or commissioners some other limited authority for their erection. Besides which, by stat. 9 G. 4, c. 77, s. 5, it shall be lawful for the trustees of any turnpike road, and they are hereby authorized and empowered, to continue all and every or any of the toll gates or toll houses now standing or being in, upon, or across any such turnpike road, or on the sides thereof, and from time to time, at any special meeting to be holden for that purpose, of which meeting public notice, specifying the time and place, and the purpose thereof, shall have been given in some newspaper published or circulated in the county or counties through which any such turnpike road passes, and also by affixing a copy of such notice on all the turnpikes, toll gates, or side bars (if any) which shall be then standing on such road, fourteen days previously to such meeting, to order and direct, by some order in writing, to be signed by three at least of the trustees present at such meeting, that there be erected and built, in, upon, or across any such turnpike road or any part thereof, or upon the sides thereof or any part thereof, when and where they shall judge necessary, such and so many toll gates, turnpikes, side bars, and chains, with toll houses, out-houses, and other conveniences thereto, and also to take in and inclose on the sides of such road, or any part thereof, suitable garden spots for each of such toll houses, not exceeding one-eighth of a statute acre to each toll house, as the said trustees shall direct or appoint; and also shall and may from time to time at any such meeting, or at any other meeting to be called as aforesaid, and by such order as afore-

said, from time to time order and direct any of such toll gates, turnpikes, side bars, and chains to be taken down or discontinued, or to be removed and placed elsewhere, upon, across, or on the sides of such road, in such situations as to them the said trustees may appear fit or eligible; provided that nothing in this Act contained shall authorize any toll gate, turnpike, side bar, or chain to be erected or built in any place or places where it is or may be provided by any local turnpike Act there shall be no turnpike, toll gate, side bar, or chain erected, built or placed.

And by stat. 3 G. 4, c. 126, s. 46, if the trustees or commissioners appointed to put any Act of Parliament made for the repair of any turnpike road into execution, shall exceed their power by erecting or continuing any gate or turnpike, where they have not any power by virtue of any Act of Parliament, to erect such gate or turnpike, the justices of the peace for the limit where any such gate or turnpike shall be erected or continued, in their general quarter session assembled, may, upon complaint of such excess of power in such trustees, in a summary way, hear and determine whether such power has been exceeded; and if such power has been exceeded, they may order the sheriff of the county, who is hereby authorized and required to execute such order, to remove any such gate or turnpike. *Id. s.* 46.

Misbehaviour of collectors; their names to be affixed.] By stat. 4 G. 4, c. 95, s. 30, every toll collector on every turnpike road shall place or cause to be placed on some conspicuous parts of the fronts of the several toll houses at which they shall be respectively stationed, and so that the same shall appear to public view, their Christian and surnames, painted in black, on a board with a white ground, each of such letters of such name or names to be at least two inches in length, and of a breadth in proportion, and that such board shall be and remain at such toll house during the whole of the time that the person whose name shall be expressed thereon shall be on duty thereat; and if any collector of the said tolls shall not place such board and keep the same there during the time he shall be such collector as aforesaid, or shall demand and take a greater or less toll [*see Stamp* v. *Sweetland*, 14 *Law J.* 184, *m.*] from any person than he shall be authorized to do by virtue of the powers of any Act, or of the orders and resolutions of the trustees or commissioners made in pursuance thereof, or shall demand and take a toll from any person or persons who shall be exempt from the payment thereof and shall claim such exemption, or shall refuse to permit or suffer any person or persons to read, or shall in anywise hinder any person or persons from reading the inscriptions on such board, or shall refuse to tell his Christian and surname to any person or persons who

shall demand the same, on being paid the said tolls or any of them, or shall, in answer to such demand, give a false name or names, or shall refuse or omit to give to the person paying the toll a ticket denoting the payment of the tolls, and naming and specifying the toll gate at which such ticket has been delivered, and the toll gate or toll gates (if any) freed by such payment, or upon the legal toll being paid or tendered shall unnecessarily detain or wilfully obstruct, hinder, or prevent any passenger or passengers from passing through any turnpike or toll gate, or shall make use of any scurrilous or abusive language to any trustee or commissioner, traveller or passenger: then and in every such case every such toll collector shall forfeit and pay any sum not exceeding five pounds for every such offence.

Provided that no person who shall ask or take more toll than he is authorized to take by this Act, or any Act now in force, or by any Act hereafter to be made and passed, shall be prosecuted by indictment for extortion or otherwise, nor shall any other proceeding be adopted against such person or persons for the offence aforesaid, other than by prosecuting for the forfeiture and penalty before a justice of the peace, as is herein or by the said recited Act directed. *Id. s.* 50.

Collector not to gain settlement, &c.] No collector or receiver of any tolls or penalties for overweight, residing in any house or building erected or used by the trustees of any turnpike road for the residence or accommodation of persons appointed for weighing any waggons or other carriages, and no apprentice or servant of any such collector or receiver, shall thereby gain a settlement in any parish or place; and that no tolls or penalties for overweight to be taken to any house or weighing machine erected or to be erected or adjoining to any turnpike road, nor any person whatsoever in respect of such tolls or penalties, or any house or building as aforesaid, shall be rated or assessed towards the payment of any poor's rates, or any other public or parochial rate or levy whatsoever. *Id. s.* 31.

Possession of toll houses how recovered.] If any collector or receiver of tolls, who shall be discharged from his office by the said trustees or commissioners, or the wife or widow, or any of the children, family, or representatives of any collector or receiver who shall die, abscond, refuse or neglect to perform his duty, or be discharged, or any other person having the possession of any toll house or buildings or weighing machine erected by virtue of any Act for repairing turnpike roads, or of stat. 3 *G.* 4, *c.* 126, shall neglect or refuse to deliver up such possession for the space of three days after demand thereof made, and notice in writing given for that purpose, by any two or more of such trustees or commissioners, or by their clerk

or treasurer: then and in any of the said cases it shall and may be lawful for any justice of the peace for the county or place where such toll house or building or weighing machine shall be situate, by warrant under his hand and seal, to order any constable or other peace officer for the same county or place, with such assistance as shall be necessary, to enter such house or building or weighing machine in the day time, and to remove the person who shall be found therein, together with his, her, or their goods out of the same, and to put the said trustees or commissioners, or any of their officers, in the possession thereof. 4 *G.* 4, *c.* 95, *s.* 49.

And in case all or any of the tolls arising by virtue of any Act for repairing or amending any turnpike road, shall have been or shall be demised or let to farm to any person in any manner whatsoever, and the lessee or farmer thereof shall neglect or refuse to perform the terms and conditions on which the same shall have been or shall be so demised or let; or in case the rent agreed to be paid by such lessee or farmer shall be in arrear by the space of seven days next after any of the days on which the same ought to be paid, pursuant to the agreement for letting to farm thereof; or in case any such lease or agreement shall in any other manner become void: then and in any of those cases it shall and may be lawful for any justice of the peace for the county or place, by warrant under his hand and seal, to order a constable or other peace officer, with such assistance as shall be necessary, to enter upon and take possession of any toll house or toll houses, toll gate, bar, or chain, or weighing machine, and the buildings and appurtenances thereto belonging, and to remove and put out such lessee or farmer of the tolls arising thereat respectively, or other person or persons who shall be found therein, together with his, her, or their goods, out of and from the possession of the said toll house or toll houses, and from the collection of tolls, and to put the said trustees or commissioners, or any one of them, or their new appointed officer, or other person acting by or under their authority, into the possession thereof; and thereupon it shall be lawful for the said trustees or commissioners (if they shall think fit) to vacate and determine the contract or agreement (if any) for demising or letting the said tolls to such lessee or farmer, and the same shall be from that time utterly void to all intents and purposes (save as to the covenants or agreements for payment up to that time of the rent thereby reserved, or other covenants or agreements on the lessee's part which shall have been holden) as if such demise or agreement had never been made; and it shall be lawful for the said trustees or commissioners, in every such case, to demise or let to farm the said tolls again to any other person, or cause them to be collected, as if no former demise, contract or agreement had been made relative thereto. *Id. s.* 59.

The following is the form of the order, as given by stat. 3 G. 4, c. 126, sch. No. 15, with reference to a similar clause which is now repealed, but with such alterations as the difference in the statutes requires:—

County of —— } *To the* [*constable*], [*headborough,*] [*tithing-to wit.* } *man,*] *of* ——, *in the said county.*

Whereas complaint hath been made unto me, A. B., Esq., one of Her Majesty's justices of the peace for the said county, upon the oath of ——, *and other evidence now produced to me, that C. D., who now inhabits the turnpike or toll gate house at* ——, *upon the turnpike road leading from* —— *to* ——, *and was appointed to collect the tolls there, hath been duly discharged by the trustees of the said turnpike road from any further collecting or receiving the tolls arising at the said gate,* [or as the case may be] *and hath refused and still doth refuse to quit the possession of the said house, for the space of three days after demand thereof made, and notice in writing duly given for that purpose; and the said C. D. having been summoned to appear before me this day to show cause why he should not be removed from the said house, and having shown no sufficient cause for that purpose* [*or not having appeared*], *I do hereby authorize and require you, with such assistance as shall be necessary, to enter into the said toll house or turnpike house, and the buildings belonging thereto, in the day time, and to remove the said C. D., and all such persons as shall be found therein, together with his and their goods, out of such house and buildings, and to put the said trustees, or such of their officers as they may appoint in that behalf, into the possession thereof, for which this shall be your sufficient warrant. Given under my hand and seal, this* —— *day of* ——.

[This form may be varied to suit the case of the widow or family of a deceased collector.]

Destroying or damaging turnpike gates, &c.] This was made a felony by 3 G. 4, c. 126, s. 128; but that section of the statute was afterwards repealed by stat. 7 & 8 G. 4, c. 27, s. 1, and the offence was made a misdemeanor only, and punishable accordingly, by stat. 7 & 8 G. 4, c. 30, s. 14, which shall be noticed particularly hereafter, under the title "*Malicious Injuries.*" *See also stat.* 4 *G.* 4, *c.* 95, *s.* 72, *post.* p. 699.

4. *Tolls.*

To be collected.] The trustees of any turnpike road, or any person appointed or continued to be appointed collector of the tolls to be taken by virtue of any local turnpike Act, may demand and take every day (such day, for the purposes of all local turnpike Acts, being computed from twelve of the clock at night to twelve of the clock of the next succeeding night),

the several and respective tolls to be mentioned in any such Act, at the several and respective toll gates and turnpikes, or side bars and chains which are or shall be continued or erected by virtue of this Act, or of any local turnpike Act, in, upon, across, or on the sides of any turnpike road, or any part or parts thereof; and which tolls or sums of money shall be demanded and taken as aforesaid before any horses, cattle, or carriage whatsoever shall be permitted to pass through any toll gate, or turnpike, or side bar or chain; and the tolls or sums of money to be levied and collected by virtue of any local turnpike Act shall be and the same are hereby vested in the trustees of such Act for the purposes thereof, in manner to be thereby directed. 9 *G.* 4, *c.* 77, *s.* 16.

Tables of tolls to be set up.] The trustees and commissioners for making or maintaining any turnpike road, shall put up or cause to be put up, and afterwards to be continued, at every toll gate within their respective districts, a table, painted in distinct and legible black letters, on a board with a white ground, containing at the top thereof the name of the gate at which the same shall be put up, and also a list of all the tolls payable at every such gate, distinguishing severally the total amount of tolls payable under any particular Act or Acts, and this and the said recited Act, and the different sorts of carriages of which they are to be paid, where there shall be any variation therein, and also a list of the several gates which shall be wholly or partially cleared by the payment of toll at the toll gate or bar where such table of tolls shall be affixed; and the said trustees or commissioners shall also provide tickets denoting the payment of toll, and on such tickets shall be specified the name of the gate at which the same respectively shall be delivered, and also the names of the several gates freed by such payment, one of which tickets shall be delivered *gratis* to the person paying the toll; and on the production of such ticket at any gate or gates therein mentioned as being cleared as aforesaid by the payment of the toll at the gate where such ticket was delivered, the persons producing the same shall pass through the gate or gates therein mentioned without paying any further or additional toll. 4 *G.* 4, *c.* 95, *s.* 28.

What tolls for carriages, &c.] The local Act of Parliament, by which each turnpike road is regulated, usually states what tolls are to be taken, or otherwise limits the authority of the trustees or commissioners of fixing their amount. And in all carriages wherein oxen or neat cattle shall be used, two oxen or neat cattle shall be considered as one horse for all the purposes mentioned in this or any particular turnpike Act, with respect to tolls or other things. 3 *G.* 4, *c.* 126, *s.* 38.

Also, where by any Act for repairing a turnpike road, no toll

is provided in respect of a coach, chariot, chaise, or other carriage with four wheels, passing through a turnpike gate, affixed, tied, or secured to any waggon or cart, the same toll, and no more, shall be taken for it, as if the same had passed through drawn by two horses; and where by such Act no toll is provided in respect of a chair, cart, or other carriage, with two wheels only, passing through a turnpike gate, so affixed, tied, or secured to any waggon or cart as aforesaid, the same toll, and no more, shall be taken for it, as if the same had passed through drawn by one horse only; and where any horse shall be fastened to, but not used in drawing any waggon, cart, or other carriage, such horse shall not be liable to a higher toll than a single horse: provided that if any coach, chariot, chaise, chair, cart, or other carriage so affixed, tied, or secured, to any waggon or cart, shall have any goods conveyed therein other than the harness thereto belonging, and such articles of package as may be necessary for the protection of such carriages, the same shall be liable to double the toll thereby imposed. *Id. s.* 31.

Toll, according to the breadth of wheels.] The trustees or commissioners for making or maintaining any turnpike road, shall demand for every waggon, wain, cart, or other such carriage, having the fellies of the wheels of less breadth than four and a half inches at the bottom or soles thereof, or for the horse or horses or cattle drawing the same, one-half more than the tolls which shall be payable for any carriage of the same description having the wheels thereof of the breadth of six inches; and for every waggon, wain, cart, or other such carriage, having the fellies of the wheels thereof of the breadth of four and a half inches and less than six inches at the bottom or soles thereof, or for the horse or horses or other cattle drawing the same, one-fourth more than the tolls which shall be payable on any carriage of the like description, having the wheels thereof of the breadth of six inches. *Id. s.* 7.

But where any particular Act or Acts of Parliament now in force relating to any turnpike road, shall direct a higher rate of toll to be taken on any waggon, wain, cart, or other such carriage having the fellies of the wheels thereof of less breadth than six inches, and such higher rate is more than the addition which is herein-before directed to be taken, such higher rate of tolls shall continue to be collected on the road or roads to which the said Act or Acts relate. *Id. s.* 8.

On the other hand, where the trustees had not, previously to the passing of stat. 3 G. 4, c. 126, collected the additional tolls given by stat. 13 G. 3, c. 84, and the local Act under which they act, then where the wheels are less than four and a half inches in breadth, they may take the same toll as in the local

Act are payable for the same; where the wheels are from four and a half to six inches, then one-sixth less; where the wheels are six inches or more, one-third less. 4 *G.* 4, *c.* 95, *s.* 5, *and see sect.* 6.

Where any waggon or cart shall have the sole or bottom of the wheels thereof rolling on a flat surface, and the nails of the tire of such wheels countersunk and are cylindrical, (that is to say,) of the same diameter on the inside next the carriage as on the outside, so that when such wheels shall be rolling on a flat or level surface, the whole breadth thereof shall bear equally on such flat or level surface, and shall have the opposite ends of the axletrees of such waggon, cart, or other carriage, so far as the same shall be inserted into the respective naves of the wheels thereof, horizontal, and in the continuance of one straight line, without forming any angle with each other, and in each pair of wheels belonging to such carriage the lower parts when resting on the ground shall be at the same distance from each other as the upper parts of such wheels: the trustees or commissioners of any turnpike road, at a general meeting, if they shall think fit so to do, may make an order for every such waggon and cart to pass through any toll-gate or bar under their superintendence, upon paying only so much of the tolls as shall not be less than two-thirds of the full toll payable by any Turnpike Act on such waggon, cart or other carriage, and the horse or horses or cattle drawing the same. 3 *G.* 4, *c.* 126, *s.* 9.

And any trustee or commissioner of a turnpike road, or any collector or his deputy, or other person acting by authority of such trustee or commissioner, or of their lessee of tolls, may measure and examine the breadth and construction of the wheels of every waggon, cart, or other such carriage passing on such turnpike road; and if any owner or driver of any such waggon, cart, or other carriage, shall turn or drive out of the road, in order to avoid or evade the measuring of the wheels of such waggon, cart, or other carriage, or if any such owner, driver, or any other person shall refuse to allow the wheels of any such waggon, cart, or other carriage to be measured, and the construction thereof examined, or shall attempt to pass through any toll-gate or bar before such measurement and examination shall be made (the same having been required), or shall in any way hinder or obstruct any such trustee or commissioner, or other authorized person, in making such measurement and examination: every such owner, driver, or other person so misbehaving, shall for every such offence forfeit and pay any sum not exceeding five pounds; and that it shall not be lawful for any such waggon, cart, or other carriage, not permitted to be measured or examined as aforesaid, to pass along any turnpike road; and if any collector or his deputy, or any person appointed to collect the tolls, shall allow the

same to pass before such measurement and examination shall be made (the same having been required), every collector, deputy, or other person shall for every offence forfeit and pay any sum not exceeding five pounds. *Id. s.* 11.

Toll for overweight.] The stat. 3 G. 4, c. 126, s. 12—14, makes certain regulations as to the weights which waggons and carts may carry upon a turnpike road, in summer and winter. And by the 15th section, all trustees and commissioners appointed by or under any Act or Acts of Parliament for the making or maintaining of any turnpike road, or for any person authorised by them, shall receive, take, and demand, over and above the tolls payable by any Act or Acts of Parliament now in force or hereafter to be passed, the following sums of money, as additional toll for every hundred weight, of one hundred and twelve pounds to the hundred, which any waggon, cart, or other such carriage, together with the loading thereof, shall weigh at any weighing engine over and above the weights hereinbefore allowed to each of them respectively; (that is to say,) for the first and second hundred of such overweight, the sum of 3*d.* for each hundred; for every hundred of such overweight above two hundred and not exceeding five hundred, 6*d.*; for every hundred of such overweight above five hundred and not exceeding ten hundred, 2*s.* 6*d.*; and for every hundred of such overweight exceeding ten hundred, 5*s.*; which said additional sums or tolls hereby granted and made payable at any weighing engine shall and may be levied and recovered, in any of the cases aforesaid, in such manner as any other toll or duty payable on the road on which any such weighing engine shall be erected is or shall be by law to be levied and recovered, and the monies arising therefrom shall be applied to the repairs of the turnpike road on which the same shall be recovered. 3 *G.* 4, *c.* 126, *s.* 15.

Provided always, that the regulations of weight hereinbefore mentioned, shall not extend to any waggons, carts, or other carriages carrying only manure or lime for the improvement of land, or any hay, straw, fodder, or corn unthrashed, except hay, straw, fodder, or corn carried for sale; nor to any waggons, carts, or other carriages carrying only one tree or one log of timber, or one block of stone, or one cable or rope; nor shall the said regulations of weight extend to any chaise marine, coach, berlin, barouche, sociable, chariot, calash, hearse, break, gig, chaise, or taxed cart. *Id. s.* 16.

But by stat. 4 G. 4, c. 95, s. 17, where any exemption from toll shall be claimed or allowed under the provisions of the said recited Act, (3 *G.* 4, *c.* 126,) or this Act, or any other Act of Parliament for repairing and maintaining any turnpike road, such exemption shall not extend to or be allowed for the additional tolls imposed by the said recited Act, and directed to be

taken for every hundred weight, which any waggon, cart, or other such carriage, together with the loading thereof, shall weigh at any weighing engine, over and above the weights in and by the said recited Act allowed to each of them respectively, unless the waggon, wain, cart, or other such carriage in respect of which the exemption shall be claimed shall likewise be by the said recited Act, or this or some other Act or Acts, specially exempted from such additional tolls for overweight; but in all cases (where not specially exempted) the said additional tolls shall be paid, and only the original toll allowed. 4 *G.* 4, *c.* 95, *s.* 17.

And by the same statute, s. 10, no person shall, by virtue of the said recited Act, or this or any other Act of Parliament, have, claim, or take the benefit or advantage of any exemption from toll or part of tolls, or penalties for overweight, or to pay less toll for or in respect of any waggon, wain, cart, or other carriage, or the horses or beasts drawing the same, and carrying any particular kind of goods, than other carriages of the like nature carrying other goods ought to pay, unless such waggon, wain, cart, or other carriage in respect of which the exemption shall be claimed shall have the sole of the bottom of the fellies of the wheels thereof of the breadth or gauge of four and a half inches or upwards, (other than and except carts and carriages employed in carrying corn or grain in the straw, hay, straw, fodder, dung, or lime for the improvement of land, or other manure, or any plough, harrow, or implements of husbandry only,) but that the tolls imposed by any Act, together with the additional tolls required to be taken for or in respect of every such waggon, wain, cart, or other carriage, having the sole or bottom of the fellies of the wheels thereof of less breadth or gauge than four and a half inches as aforesaid, and for or in respect of horses or beasts of draught drawing the same, and the additional tolls or penalties for overweight (except as before excepted), shall be paid in the same manner as if no exemption or less toll had been enacted or allowed, and as fully as all other waggons, wains, carts, and carriages, and horses drawing the same, ought respectively to pay, which are not entitled to any exemption from toll in the whole or part, or to pay a less toll than other waggons, wains, carts, and carriages. 4 *G.* 4, *c.* 95, *s.* 10.

When payable only once in a day.] All horses travelling for hire under the post-horse duties Acts, having passed through any turnpike gate drawing any carriage in respect of which any toll shall have been paid, on returning through such turnpike gate, and the other gates (if any) cleared by such payment, without such carriage, or with such carriage empty, and without a ticket denoting a fresh hiring, shall be permitted to repass toll-free, provided the same return before nine o'clock

of the morning succeeding the day on which the toll shall have been paid. 3 *G.* 4, *c.* 126, *s.* 29.

And where any horse shall pass through a turnpike gate, not drawing any carriage, and a toll shall be paid thereon, and the same horse shall return drawing any carriage on the same day, or within eight hours after their first passing through such gate, the toll paid on such horse shall be deducted from the toll payable on the same when drawing the carriage on their return, so that no higher toll shall in the whole be taken than if such horse had in the first place passed through such turnpike gate, drawing the said carriage. *Id s.* 30.

Besides these general provisions, there is always a provision upon this subject contained in the local Act relating to each turnpike road. And from the decisions upon those Acts, the following general rules may be deduced, for construing such provisions, as far as respects returning with horses drawing carriages. If the toll be imposed on the horses drawing the carriage, and not upon the carriage itself, and the exemption be as to the party returning with the same horses, *Gray* v. *Shilling*, 2 *Brod.* & *B.* 30, *and see Fenton* v. *Swallow*, 1 *Ad.* & *El.* 723. *Fearnley* v. *Morley*, 5 *B.* & *C.* 25, or the same horse *or* carriage, *Norris* v. *Peate*, 3 *Bing.* 41. *Jackson* v. *Curwen*, 5 *B.* & *C.* 31. *Hopkins* v. *Thoroughgood*, 2 *B.* & *Ad.* 916. *Niblett* v. *Pottow*, 1 *Bing. N. C.* 81, no second toll shall be exacted from the party for repassing with the same horses, though drawing a different carriage; but if the exemption be as to returning with the same horses *and* carriage, there the same horses drawing a different carriage would not be exempt *Loaring* v. *Stone*, 2 *B.* & *C.* 515. On the other hand, if the toll be imposed on the carriage only, and not on the horses, and the exemption be as to the party returning with the same carriage, or with the same carriage *or* horses, *Williams* v. *Sangar*, 10 *East*, 66, or with the same carriage *and* horses, *Waterhouse* v. *Keen*, 4 *B.* & *C.* 200, no second toll shall be exacted from the party for repassing with the same carriage, though drawn by different horses. So where a toll was imposed upon horses drawing carriages, or drawing waggons, and also upon carriages fixed to waggons, &c., and the exemption was as to returning with the same horses, coach, waggon, or other carriage: the court held that no second toll was payable for returning with the same horses, drawing a different carriage; for the word "carriage," in the exempting clause, might have reference to the carriages fixed to waggons, before mentioned; and if the framers of the Act intended to exact a second toll when the horses were returning with a different carriage, they should have done so in plain and unambiguous terms. *Chambers et al.* v. *Williams*, 5 *B.* & *C.* 36 *n.*

Exemptions.] No toll shall be taken on any turnpike road,

for any horses or carriages attending [or going to attend, or returning from having attended, 4 *G.* 4, *c.* 95, *s.* 24,] his Majesty or any of the royal family;—or of or from any person for any horse or other beast or cattle, or for any waggon, wain, cart, or other carriage, employed in carrying or going empty to fetch, or returning empty from carrying, having been employed only in carrying or conveying, on the same day, any stones, bricks, timber, wood, gravel, or other materials, for making or repairing any turnpike road or public highway, or for building, rebuilding, or repairing any present or any future bridge or bridges on any such road or public highway, [or employed, or going to be or returning from having been employed in the performance of statute labour on any road, 1 & 2 *W.* 4, *c.* 25, *s.* 2,] or of or from the surveyor of any turnpike road when engaged in executing or proceeding to execute, within the limits of his own trust, the powers of this or any other Act or Acts of Parliament relating to any turnpike road;—or for any horse, or other cattle or carriage, employed in carrying, or having been employed only in carrying on the same day, any dung, soil, compost, or manure (save and except lime) for improving lands, or any ploughs, harrows, or implements of husbandry (unless laden also with some other thing not hereby exempted from toll), or any hay, straw, fodder for cattle, and corn in the straw, (which has grown on land in the occupation of the owner of any such hay, &c.) potatoes, or other agricultural produce, and which has not been bought, sold, or disposed of, or is going to be sold or disposed of;—or for any horses or other beast employed in husbandry going to or returning from plough or harrow, such horses or other beasts not going or returning on those occasions more than two miles on the turnpike road on which the exemption shall be claimed; [or for any horse, ass, sheep, swine, or other beast or cattle of any kind going to or from water or pasture, or to or from being shoed or farried, and passing on any turnpike road, provided that such horse, ass, sheep, swine, &c. do not pass upon such turnpike road, more than the space of two miles, going to or returning from water or pasture, or to or from being shoed or farried; 1 & 2 *W.* 4, *c.* 25, *s.* 1;]—or of or from any person going to or returning from his proper parochial church or chapel, or of or from any other person going to or returning from his usual place of religious worship tolerated by law, on Sundays, or on any day on which divine service is by authority ordered to be celebrated, [such church or chapel not being within five miles of the Royal Exchange or Westminster Hall, *sect.* 33,] or of or from any inhabitant of any parish, township, or place going to or returning from attending the funeral of any person who shall die and be buried in the parish, township, or hamlet in which any turnpike road shall lie;—or from any rector, vicar,

or curate going to or returning from visiting any sick parishioner, or on other his parochial duty within his parish;—or for horses, carts, or waggons employed only in conveying any vagrant sent by a legal pass, or any prisoner sent by any legal warrant, or returning empty after having been so employed;—or for any horses or carriages, of whatever description, employed in conveying the mails of letters and expresses under the authority of his Majesty's postmaster-general, either when employed in conveying, fetching, or guarding such mails or expresses, or in returning back from conveying or guarding the same;—or for the horses of any officers or soldiers on their march or on duty, or for any horse or other beast, or any cart, carriage, or waggon, employed in carrying, or returning empty from carrying, having been employed only in carrying or conveying, the arms or baggage of any such officers or soldiers, or employed in carrying, or returning empty from having been employed only in carrying, any sick, wounded, or disabled officers, or soldiers;—or for any waggon, wain, cart, or other carriage, whatsoever, of the horses or other cattle drawing the same, employed in conveying any ordnance or barrack, or commissariat or other public stores of or belonging to his Majesty, or for the use of his Majesty's forces, or returning empty from having been so employed;—or for any carriage conveying volunteer infantry, or for any horse furnished by or for any person belonging to any corps of yeomanry or volunteer cavalry or infantry, and rode by him in going to or returning from any place appointed for and on the days of exercise, inspection, or review, or on other public duty, provided that such person shall be dressed in the uniform of his corps, and shall have his arms, furniture, and accoutrements, according to the regulations of such corps at the time of claiming the exemption;—or for any horses or carriages conveying any person to or from any election of a knight of the shire to serve in parliament for the county or counties in which such turnpike road shall be situated;—or for any horses or carriages which shall only cross any turnpike road, or shall not pass above one hundred yards thereon. 3 *G.* 4, *c.* 126, *s.* 32. *See* 4 *& 5 Vict. c.* 33, *s.* 1, *infra.*

And this Act (3 G. 4, c. 126,) shall not extend to repeal or take away any exemptions from toll, which shall have been granted or allowed by any Act for making or repairing any turnpike road. 4 *G.* 4, *c.* 95, *s.* 26.

Also, "no toll shall be demanded or taken for or in respect of any horse, ass, sheep, swine, or other beast or cattle of any kind whatsoever, or of any waggon, cart, vehicle, or other carriage, which shall only cross any turnpike road, or shall not pass above 100 yards thereon." 4 & 5 *Vict. c.* 33, *s.* 1.

Exemption as to manure.] Many local Acts, relating to turnpike roads, exempt from toll waggons and carts, carrying

manure. Also by the general Act 3 G. 4, c. 126, s. 32, already mentioned *supra*, no toll shall be taken for any horse or other cattle or carriage, employed in carrying or having been employed only in carrying on the same day, any dung, soil, compost or manure, [or lime, if exempted by the local Act, 3 & 4 *Vict. c.* 51,] for improving lands. And," manure" here includes bone dust as well as other manure, and, it seems, the bones themselves before they are crushed, as well as afterwards. *Pratt* v. *Brown*, 8 *Car. & P.* 244.

But by stat. 4 G. 4, c. 95, s. 23, nothing in stat. 3 G. 4, c. 126, shall extend to exempt any waggon, wain, cart, or other carriage laden with dung, compost, or manure, for manuring land, or any horse or other beast drawing the same, from any toll imposed in respect thereof by any local Act or Acts for making, repairing, and maintaining any particular roads, where in such Act or Acts such dung, compost, or manure shall be specially made subject to toll throughout the whole of such roads, without any local, parochial, or partial exemption. 4 *G.* 4, *c.* 95, *s.* 23.

Where waggons, &c., laden with manure, or materials for repairing highways, are exempt from toll, such waggons, &c., in going for it shall be exempted also; 3 *G.* 4, *c.* 126, *s.* 26; but in the latter case, the driver, upon receiving a ticket, shall nevertheless pay the toll, and be repaid it when he returns with his waggon, &c. laden; and every collector of such toll refusing to give such ticket on receiving the toll, or refusing or neglecting to return the same toll upon the return of such waggon, cart, or other carriage so laden, and re-delivery of the ticket, shall for every such offence forfeit to the owner of such waggon, &c. a penalty of not more than five pounds, upon conviction thereof before one or more justice or justices of the peace for the county, riding, division, or place, where such offence shall be committed. *Id. s.* 27.

And no waggon, cart, or other carriage laden with manure for land, or materials for any turnpike road or highway, shall be liable to toll, by reason only of any basket, empty sack, or spade, shovel, or fork, necessary for loading or unloading such manure or materials, being in or upon any such waggon, &c., if the loading thereof is substantially manure for land or materials for the repair of any turnpike road or highway, *Id. s.* 28.

Exemption as to the police.] No toll shall be demanded or taken on any turnpike road for any horse, or police van, carriage, or cart, passing along such road, in the service of the police establishment, under stat 2 & 3 Vict. c. 93, relating to county and district constables (*See ante, p.* 330); provided that the constable in charge of such horse, van, carriage, or cart, if not the chief constable, shall produce an order in writing under the hand of the chief constable, or shall have his dress accord-

ing to the regulations of the police force at the time of claiming the exemption; and every person who shall fraudulently claim or take the benefit of the exemption from toll herein contained, not being lawfully entitled thereunto, shall for every such offence be liable to a penalty of not more than five pounds; and in all such cases the proof of such exemption shall be upon the person claiming the same. 3 & 4 *Vict. c.* 88, *s.* 1.

Also, no toll shall be demanded on any turnpike road or bridge for any horse, police van, carriage or cart, in the service of a superintendent of parish constables appointed under stat. 5 & 6 Vict. c. 109 (*ante*, p. 311), provided he produce a certificate of his appointment under the hand of the clerk of the peace. 7 & 8 *Vict. c.* 52, *s.* 3.

Fraudulently claiming exemption.] If any person shall, by any fraudulent or collusive means, claim or take the benefit of any exemption from toll or from overweight or for using any additional horse or horses, or of any other exemption in this Act contained, he shall forfeit any sum not exceeding five pounds; and in all cases the proof of exemption shall be upon the person claiming the same. 3 *G.* 4, *c.* 126, *s.* 36.

And if any person shall claim or take the benefit of any of the exemptions mentioned in any local Turnpike Act, not being entitled to the same, every such person shall, for every such offence, forfeit any sum not exceeding five pounds; and in all cases the proof of exemption shall be upon the person claiming the same. 9 *G.* 4, *c.* 77, *s.* 17.

Taking more tolls than allowed.] If the person who shall be the farmer or renter or collector of such tolls, shall take greater or less toll from any person than what is authorized or directed by this or the particular Turnpike Act, he shall for every such offence forfeit the sum of *5l.* 3 *G.* 4, *c.* 126, *s.* 55.

Provided that no person who shall ask and take more toll than he is authorized to take by this Act, or any Act now in force, or by any Act hereafter to be made and passed, shall be prosecuted by indictment for extortion or otherwise, nor shall any other proceeding be adopted against such person or persons for the offence as aforesaid, other than by prosecuting for the forfeiture and penalty before a justice of the peace, as is herein by the said recited Act directed. 4 *G.* 4, *c.* 95, *s.* 50.

Remedy for tolls.] If any person liable to the payment of any toll under this or any other Act for making, repairing, or maintaining any turnpike road, shall, after demand thereof made, neglect or refuse to pay the same, or any part or parts thereof, it shall be lawful for the person or persons authorized or appointed to collect such tolls, by himself or themselves, or

taking such assistance as he or they shall think necessary, to seize and distrain any horse, beast, cattle, carriage, or other thing, upon or in respect of which any such toll is imposed, together with their respective bridles, saddles, gears, harness, or accoutrements, (except the bridle or reins of any horse or other beast separate from the horse or beast,) or any carriage in respect of the horses or cattle drawing which such toll is imposed, or any of the goods or chattels of the person or persons so neglecting or refusing to pay; and if the toll or any part thereof so neglected or refused to be paid, and the reasonable charges of such seizure and distress, shall not be paid within the space of four days next after such seizure and distress made, the person or persons so seizing and distraining may sell the horse, beast, cattle, carriages, or things so seized and distrained, or a sufficient part thereof, returning the overplus of the money to arise by such sale (if any), and what shall remain unsold, upon demand, to the owner thereof, after such tolls, and the reasonable charges occasioned by such seizure, distress, and sale, shall be deducted. 3 *G.* 4, *c.* 126, *s.* 39.

And if any dispute shall arise about the amount of the tolls due, or the charges of making, keeping, or selling any distress made for non-payment of tolls, it shall be lawful for the collector or the person distraining to retain such distress, or the money arising from the sale thereof, (as the case may be,) until the amount of the tolls due, and the charges of the making, keeping, and selling the distress, be ascertained by some justice of the peace for the county, division, or place wherein the turnpike or toll gate, at which the toll in dispute shall be payable, shall be situate, who, upon application made to him for that purpose, "shall examine the matter on the oath of the parties or other witness or witnesses (which oath such justice is hereby authorized and empowered to administer), and shall determine the amount of the tolls due, and shall award such costs and charges to either party as to the said justice shall appear right and proper; all which costs and charges shall and may be levied and recovered, in cases of non-payment thereof forthwith, by distress and sale of the goods and chattels of the person or persons so awarded or directed to pay the same, by warrant under the hand and seal of such justice, rendering the overplus (if any), upon demand, after deducting the costs and charges of making such distress and sale, to the person or persons whose goods and chattels shall have been so distrained and sold. *Id. s.* 40.

Evading the payment of tolls.] And "if any person shall with any horse, cattle, beast, or carriage, go off or pass from any turnpike road, through or over any land or ground near or

adjoining thereto, (not being a public highway, and such person not being the owner or occupier or servant or one of the family of the owner or occupier of such land or ground,) with intent to evade the payment of the tolls granted by any Act of Parliament;—or if any owner or occupier of any such land or ground shall knowingly or willingly permit or suffer any person, (except as aforesaid,) with any horse, cattle, beast, or carriage whatsoever, to go or pass through or over such land or ground, with intent to evade any such tolls; or if any person shall give or receive from any person other than the collectors of the tolls, or forge, counterfeit, or alter, any note or ticket directed to be given, with intent to evade the payment of the tolls, or any part thereof;—or if any person shall fraudulently or forcibly pass through any such toll-gate with any horse, cattle, beast, or carriage, or shall leave upon the said road any horse, cattle, beast, or carriage whatsoever, by reason whereof the payment of any tolls or duties shall be avoided or lessened, or shall take off or cause to be taken off any horse or other beast or cattle from any carriage, either before or after having passed through any toll-gate, or having passed through any toll-gate shall afterwards add to or put any horse or other beast to any such carriage, and draw therewith upon any part of any turnpike road, so as to increase the number of horses or other beasts drawing the said carriage, after the same shall have passed through any toll-gate whereby the payment of all or any of the tolls shall or may be evaded;—or if any person shall do any other act whatever, in order or with intent to evade the payment of all or any of the tolls, and whereby the same shall be evaded:—every such person shall for every such offence forfeit and pay any sum not exceeding five pounds." *Id. s.* 41.

Collectors neglecting to sue for penalties, &c.] And if any collector, or other person appointed to collect the tolls on any turnpike road, shall permit or suffer any waggon, wain, cart, or other carriage to pass upon any turnpike road within the view or with the knowledge of such collector or toll gatherer, or to pass through any toll-gate or bar,—with wheels of a less breadth or of a different construction, than by this Act allowed, —or without such names and descriptions painted thereon as are herein-after directed,—and shall not within the space of one week proceed for the recovery of the forfeiture or penalty hereby inflicted;—or shall allow any coach chariot, waggon, cart, or other carriage, or any passenger, to pass through any toll-gate at which such collector or other person shall be stationed, without paying the toll payable;—or shall be guilty of any other misconduct in his office:—every collector or other person so offending, and being thereof convicted before one

justice, shall forfeit for every such offence any sum not exceeding five pounds. *Id. s.* 52.

Assaulting collectors, &c.] And in case any person shall resist or make forcible opposition against any person employed in the due execution of this Act, or any particular Act made for amending any turnpike road,—or shall assault any surveyor, or any collector or collectors of the tolls, in the execution of his office,—or shall pass through any turnpike gate, rail, chain, or other fence set up by authority of parliament, without paying the toll appointed to be paid at such gate or other fence,—or shall hinder, or make any rescue of cattle or other goods distrained by virtue of this Act:—every such person shall forfeit any sum not exceeding ten pounds. *Id. s.* 139.

5. *Mile-stones, Direction Posts, &c.*

The said trustees or commissioners shall cause stones or posts to be placed in or near the sides of every turnpike road, at the distance of one mile from each other, denoting the distance of any and every such stone or post from any town or place, and also such direction post at the several roads leading out of any such road, or at any crossings, turnings, or terminations thereof, with such inscriptions thereon, denoting to what place the said roads respectively lead; and shall also cause to be painted in legible characters, on some wall or board at the entrance of every town or village, the name of such town or village; and shall also cause stones to be put up marking the boundaries of parishes, where such boundaries shall cross any turnpike road; and from time to time to repair or renew such stones, posts, and boards, and keep and continue legible the inscriptions on such stones, posts, walls, and boards respectively; and if any person shall wilfully break, cut down, pull up, or damage any such posts, stones, or boards, or shall obliterate, deface, spoil, or destroy all or any of the letters, figures, or marks which shall be inscribed or painted thereon, or on any such walls, and be thereof convicted before any justice of the peace for the county, city, or place where such offence shall be committed, such person or persons so offending shall forfeit and pay any sum not exceeding ten pounds for every such offence. *Id. s.* 119.

6. *Regulations as to Waggons, &c.*

Weight of waggons, &c.] Certain regulations are made as to the weight of goods, &c., to be carried in waggons, &c., by

sect. 12—19, and particularly by sect. 15, *ante* p. 682. But if any person shall unload any goods, wares, or merchandize from any cart, waggon, or other carriage, at or before the same shall come to any turnpike gate or weighing engine, or shall load or lay upon such carriage, after the same shall have passed any such turnpike, any goods, wares or merchandize taken or unladen from any horse, cart, or other carriages belonging to or hired or borrowed by the same waggoner or carrier, in order to avoid the payment of the duties payable for overweight;—or if any person shall so unload, in order to carry considerable quantities of goods through any turnpike gate or by any weighing engine in one and the same day, and thereby pay less toll at such turnpike gate or weighing engine than would have been paid if such goods, wares, or merchandize had not been so unladen;—or if any driver of any waggon or cart shall not wait a reasonable time whilst any other carriage shall be weighed, which shall have come to the weighing engine before the carriage of which he shall be the driver;—or if the driver of any waggon or cart shall refuse or delay to remove or drive any such waggon or cart from the weighing machine, in order by such neglect or refusal to impede or delay the weighing of any other waggon or cart,—or shall turn or drive out of any road in order to avoid or evade the weighing of any waggon or cart:—every person so offending, and being thereof lawfully convicted before one or more justice or justices of the peace for the limit where the offence shall be committed, upon the oath of one or more credible witness or witnesses, shall forfeit and pay the sum of five pounds, to be levied upon the goods and chattels of the owner of such cart, waggon, or other carriage; and each and every driver, not being the owner of such waggon or carriage, so offending, and being thereof convicted as aforesaid, shall forfeit and pay any sum not exceeding forty shillings, and in case of nonpayment thereof shall be committed to the house of correction for any time not exceeding two calendar months. *Id. s.* 20.

And the keeper of every toll-gate or bar, where any weighing engine shall be erected, shall weigh all such waggons, carts, and other carriages liable to be weighed, which shall pass loaded through such gates or bars respectively, and which he shall believe to carry greater weights than are allowed to pass without paying the said additional toll; and if any collector shall permit any such waggon, &c. to pass through such toll-gate, with greater weights than are hereby allowed, without weighing the same and receiving such additional tolls as aforesaid, he shall forfeit 5*l.*; and if the owner or driver of any waggon, &c. shall refuse to allow the same to be weighed, or shall resist any gate-keeper or toll-collector in weighing the same, he shall forfeit a sum not exceeding 5*l.* *Id. s.* 22.

And if the driver of any such carriage, being requested to return with his carriage to such weighing engine, shall neglect or refuse so to do, he shall forfeit any sum not exceeding five pounds; and it shall and may be lawful for any peace officer or other person or persons being then present, upon such neglect or refusal, to drive and take such carriage back to such weighing engine, in order to be weighed as aforesaid. *Id. s.* 24.

Wheels of waggons.] The several nails of the tires of the wheels of every waggon, wain, cart, or other such carriage used or drawn on any turnpike road, shall be so countersunk as not to project beyond one quarter of an inch above any part of the surface of such tire or tires; and if any waggon, cart, or other such carriage shall be drawn or used on any turnpike road with any wheel or wheels made, constructed, or being otherwise than as hereinbefore last described, the owner thereof shall forfeit any sum not exceeding forty shillings, and every driver thereof any sum not exceeding twenty shillings, for each and every time that such waggon, cart, or other such carriage shall be used or drawn on any turnpike road. 4 *G.* 4, *c.* 95, *s.* 2.

As to the breadth of wheels, there are no prohibitory provisions now existing in any public statute; the statutes merely lay a heavier toll upon waggons, in the inverse ratio of the breadth of the wheels, as mentioned, *ante*, p. 680.

But nothing in stat. 3 G. 4, c. 126, or this Act, contained, relating to the breadth of the wheels of carriages, or the regulations of weight, or to the tolls payable in respect of the wheels or the weight, of carriages, shall extend to any chaise marine, coach, landau, berlin, barouche, phaeton, sociable, chariot, calash, hearse, break, chaise, curricle, gig, chair, or taxed or any cart not drawn by more than one horse or two oxen. 4 *G.* 4, *c.* 95, *s.* 19.

Use of skid-pans, &c.] The trustees of turnpike roads may order skid-pans or slippers to be used with waggons or carts going down hill; and whilst any such order shall be in force, every person who shall drive or act as the driver of any waggon or cart down any hill with either of the wheels locked, and without using or having such skid-pan or slipper at the bottom of such wheel, shall for every such offence forfeit and pay any sum not exceeding twenty shillings; provided always, that a copy of such order shall be affixed on all the turnpikes standing on such road, for thirty days at least before the same shall be in force. 3 *G.* 4, *c.* 126, *s.* 126.

Names of owners, on waggons, &c.] By stat. 4 G. 4, c. 95, s. 15, for the better discovery of offenders, it is enacted, that

the owner of every waggon, wain, or cart, or other such carriage, shall paint or cause to be painted in one or more straight line or lines upon some conspicuous part of the right or off side of his, her or their waggon, wain, or cart, or other such carriage, or upon the off shafts thereof, before the same shall be used on any turnpike road, his, her, or their Christian and surname, and place of his, her, or their abode, or the Christian and surname and place of abode of the principal partner or owner thereof, at full length, in large legible letters not less than one inch in height, and continue the same thereupon so long as such waggon, wain, or cart, or other such carriage shall be upon any turnpike road; and every owner and proprietor of any waggon, train, or cart, or other carriage, who shall use or allow the same to be used on any turnpike road without the names and descriptions painted thereon as aforesaid, or who shall paint or cause to be painted any false or fictitious name or place of abode on such waggon, wain, or cart, or other carriage, shall forfeit and pay for every such offence a sum not exceeding five pounds.

Railway carts.] And if any waggon or cart, built or constructed to be and usually used on any railway or tramroad, shall be drawn or pass loaded on any turnpike road, out of and away from such railway or tramroad, for the distance of more than one hundred yards: the owner or proprietor of every such waggon or cart shall forfeit and pay the sum of forty shillings, and the driver thereof, not being the owner, the sum of twenty shillings, for each and every time such waggon or cart shall be so drawn and pass. *Id. s.* 16.

7. *Regulations as to drivers.*

Not to be under thirteen years of age.] No cart or waggon, travelling on any turnpike road, shall be driven by any person who shall not be of the full age of thirteen years, under a penalty not exceeding ten shillings, to be paid by the owner of such cart or waggon. 3. *G.* 4, *c.* 126, *s.* 131.

How many carts he may drive.] One person may act as the driver of two carts on any turnpike road, if such carts shall not be drawn by more than one horse each, and the horse of the hinder cart shall be attached by a rein or reins to the back of the cart which shall be foremost; and in case the said horse shall not be so attached, the driver of the said carts shall forfeit the sum of twenty shillings, to be recovered as other penalties are by this Act to be recovered: provided also, that this enactment shall not extend, or be construed to extend, to carts

travelling on any turnpike road within ten miles from the cities of London or Westminster. *Id. s.* 130.

Misbehaviour of drivers.] If the driver of any waggon or cart of any kind shall ride upon any such carriages in any turnpike road, not having some other person on foot or on horseback to guide the same (such light carts as are usually driven with reins, and are then conducted by some person holding the reins of the horse or horses, not being more than two, drawing the same, excepted);—or if the driver of any carriage whatsoever on any part of any turnpike road shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such road;—or shall quit the road and go on the other side the hedge or fence inclosing the same, or wilfully be at such distance from such carriage, or in such a situation whilst it shall be passing upon such turnpike road, that he cannot have the direction and government of the horses or cattle drawing the same;—or if any person shall drive or act as the driver of any such coach, postchaise, or other carriage let for hire, or waggon, wain, or cart, not having the owner's name as hereby required painted thereon, or shall refuse to discover the true Christian and surname of the owner or principal owners of such respective carriage;—or if the driver of any waggon, cart, coach, or other carriage whatsoever, meeting any other carriage, shall not keep his or her carriage on the left or near side of the road;—or if any person shall in any manner wilfully prevent any other person from passing him or any carriage under his care, upon such road, or by negligence or misbehaviour prevent, hinder, or interrupt the free passage of any carriage, or of his Majesty's subjects, on any turnpike road:—every such driver so offending, and being convicted of any such offence either by his own confession, the view of a justice of the peace, or by the oath of a credible witness, before any justice of the peace of the limit where such offence shall be committed or where such offender shall be apprehended, shall for every such offence forfeit any sum not exceeding forty shillings, in case such driver shall not be the owner of such carriage, and in case the offender be the owner of such carriage, then any sum not exceeding five pounds, and in either of the said cases shall, in default of payment, be committed to the house of correction for any time not exceeding one month, unless such forfeiture shall be sooner paid; and every such driver, offending in either of the said cases, shall and may by the authority of this Act, with or without any warrant, be apprehended by any person who shall see such offence committed, and shall be conveyed before some justice of the peace, to be dealt with according to law; and if any such driver, in any of the cases aforesaid, shall refuse to discover his name, it shall and may be lawful for the

justice of the peace before whom he shall be taken, or to whom any such complaint shall be made, to commit him to the house of correction for any time not exceeding three months, or to proceed against him for the penalty aforesaid, by a description of his person and the offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name. *Id. s.* 132.

And by stat. 4 G. 4, c. 95, s. 73, in case the driver of any waggon, cart, or of any coach or other carriage, shall offend against any of the provisions of any Act for making or maintaining any turnpike road, or the said recited Act (3 G. 4, c. 126) or this Act, whereby any penalty shall be incurred, and shall refuse to disclose his name, or shall abscond or absent himself so as not to be found, then it shall and may be lawful for any justice of the peace, before whom complaint shall be made, and he is hereby required to issue a summons, requiring the owner of such waggon, cart, or other carriage, to appear before him to answer the matter of such complaint; and if such owner shall refuse or neglect to appear, or appearing shall not then, or within ten days thereafter, produce the driver so offending, or disclose his name and place of abode, then the said justice, or any other justice of the peace, on an examination of the circumstances, and ascertaining, by the examination of witnesses on oath, that such offence has been committed by any such driver of any waggon, cart, or other carriage, shall order and adjudge that the penalty incurred by such driver shall be paid by the owner of such waggon, cart, or other carriage; which penalty shall be recovered and applied in manner directed by the said recited Act.

8. *Nuisances.*

Windmills.] No person shall hereafter erect or cause any windmill to be erected within the distance of two hundred yards from any part of any turnpike road, under the penalty of five pounds for every day such windmill shall continue: provided always that nothing herein contained shall be construed to render legal the re-erection or continuance of any windmill, in any case where by the common law such windmill shall be a public or private nuisance. 3 *G.* 4, *c.* 126, *s.* 127.

Cattle straying on the road.] If any horse, ass, sheep, swine, or other beast or cattle of any kind, shall at any time be found tethered, or wandering, straying, or lying about any turnpike road, or on any part thereof (except on such parts of any road as lead or pass through or over any common or waste or unenclosed ground), it shall and may be lawful for any surveyor of the road where the same shall be found, or any other person

or persons whomsoever, to seize and impound every such horse, ass, sheep, swine, or other beast or cattle, in the common pound (if any) of the parish, township, tithing, or place where the same shall be found, or in such other place as the trustees or commissioners of the road where the same shall be found shall have provided or shall provide for that purpose, and the said horse, ass, sheep, swine, or other beast or cattle there to detain until the owner or owners thereof shall, for every and each horse, ass, sheep, swine, or other beast or cattle so impounded, pay the sum of two shillings, together with the reasonable charges and expenses of impounding and keeping the same, to the treasurer, clerk, or surveyor of the road on which the beast so impounded shall have been found,—the said sum of two shillings for each beast, to be applied to the use of and in aid of the tolls of such road; and in case the said penalty and charges and expenses shall not be paid within five days after such impounding, (notice being thereof first given to the owner, if known at the time, or if not known, by affixing written notices at the two next toll-gates on the road nearest to the place where the same shall be impounded,) it shall and may be lawful for any one or more justice or justices of the peace of the county or place where the offence shall have been committed, to order such horse, ass, sheep, swine, or other beast or cattle to be sold, except where it shall be made to appear to such justice or justices that the horse, ass, sheep, swine, or other beast impounded, escaped from any inclosure by any gate or fence being wilfully or negligently left open or destroyed by any person not being owner or occupier of such inclosure, or employed by such owner or occupier, in which case such justice or justices may remit the said penalty; and the money arising from such sale, after deducting the said penalty, and charges and expenses of impounding, keeping, and selling every such horse, ass, sheep, swine, or other beast or cattle, shall be paid to the person whose property the same so sold shall appear to have been; and in case the owner thereof shall not be known, and no application shall be made for the money arising from such sale within twenty-one days after such sale shall have taken place, the said money shall be applied, after deducting the said charges and expenses in the same manner as the said penalty of two shillings is hereinbefore directed to be applied: provided always, that no owner of any horses, asses, sheep, swine, or other beast or cattle impounded as aforesaid, shall in any case pay more than the sum of five pounds over and above the charges and expenses of impounding and keeping the same, for any number of horses, asses, sheep, swine, or other beasts or cattle impounded at one time; and provided always, that nothing in this clause shall be deemed, taken, or construed to extend to any right of pasturage which may exist on the sides of any turnpike roads. 4 *G.* 4, *c.* 95, *s.* 75.

Other Nuisances.] If any person shall ride upon any foot-path or causeway by the side of any turnpike road, made or set apart for the use or accommodation of foot passengers; or shall lead or drive any horse, ass, mule, swine, or cattle, or carriage of any description, or any wheelbarrow, truck, or sledge, or any single wheel of any waggon, cart, or carriage apart therefrom, upon any such footpath or causeway,—or shall cause any injury or damage to be done to the same, or the hedges, posts, rails, or fences, thereof,—or shall wilfully pull down or damage any bridge, wall, or any other building or erection made by the trustees or commissioners of any turnpike road, or repaired or repairable by them;—or shall haul or draw, upon any part of such turnpike road, any timber, stone, or other thing, otherwise than upon wheel carriages, or shall suffer any timber, stone, or other thing which shall be carried principally or in part upon wheeled carriages to drag or trail upon such road to the prejudice thereof;—or shall use any tipstick, joggle, or other instrument for the purpose of retarding the descent of any cart or other carriage down any hill, in such manner as to destroy, injure, or disturb the surface of any turnpike road;—or shall in or upon such road, or by the side thereof, or in any exposed situation near thereto, kill, slaughter, singe, scald, burn, dress, or cut up any beast, swine, calf, lamb, or other cattle;—or if any person driving any horse, or other beast on the said road, carrying any iron bar or rod, basket or pannier, or any other matter or thing, shall place such bar or rod, basket or pannier, matter or thing, so that the same or any of them shall project more than thirty inches from the side of such horse or other beast, or so as in any manner to obstruct or impede the passage of any person, or any horse, beast, or carriage, travelling along such turnpike road;—or if any hawker, higgler, gipsy, or other person travelling with any machine, vehicle, cart, or other carriage, with or without any horse, mule, or ass, shall pitch any tent, booth, stall, or stand, or encamp upon or by the sides of any part of any turnpike road;—or if any blacksmith or other person occupying a blacksmith's shop, situate near any turnpike road, and having a window fronting the said road, shall not, by good and close shutters every evening after it becomes twilight, bar and prevent the light from such shop shining into or upon the said road;—or if any person shall make or assist in making any fire or fires commonly called bonfires, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework whatsoever, within eighty feet of the centre of such road;—or bait, or run for the purpose of baiting, any bull, or play at football, tennis, fives, cricket, or any other game, upon such road, or on the side thereof, or in any exposed situation near thereto, to the annoyance of any passenger, or passengers;—or if any person shall leave any waggon, wain,

cart, or other carriage upon such road, or on the side thereof, without a proper person in sole custody or care thereof, longer than may be necessary to load or unload the same, except in cases of accident, and in cases of accident for a longer time than may be necessary to remove the same;—or shall not place such waggon, wain, or other carriages, during the time of loading or unloading the same, or of taking refreshment, as near to one side of the road as conveniently may be, either with or without any horse or beast of draught harnessed or yoked thereto;—or shall lay any timber, stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or thing upon such road, or on the side thereof, or the footpaths or causeways adjoining, to the prejudice of such road or footways, or to the prejudice, annoyance, interruption, or personal danger of any person travelling thereon;—or shall suffer any water, filth, dirt, or other offensive matter or thing to run or flow into or upon such road or footpaths from any house, building, erection, lands, or premises adjacent thereto;—or if any person, driving any pigs or swine upon such road, shall suffer such pigs or swine to root up or damage such road, or the fences, hedges, banks, or copse on either side thereof;—or if any person shall, after having blocked or stopped any cart, waggon, or other carriage in going up a hill or rising ground, cause or suffer to be or remain on such road the stone or other thing with which such cart or other carriage shall have been blocked or stopped;—or if any person or persons shall pull down, damage, injure, or destroy any lamp or lamp-post put up, erected, or placed in or near the side of any turnpike road or toll-house erected thereon, or shall extinguish the light of any lamp:—every person so offending shall for each and every such offence forfeit and pay any sum not exceeding forty shillings, over and above the damages occasioned thereby. 3 G. 4, c. 126, s. 121.

And by stat. 4 G. 4, c. 95, s. 72, if any person whosoever shall wilfully pull down, break, injure, or damage any table of tolls put up or fixed at any toll-gate or bar on any part of any turnpike road, or wilfully or designedly deface or obliterate any of the inscriptions, letters, figures, or marks thereon;—or if any person or persons shall wilfully pull up, throw down, break, injure, or damage any posts, rails, or fences placed or to be placed or put up by order of any trustees or commissioners of any turnpike road, or their surveyor, either by the side of such road, or at or near to any pit or quarry which shall be used, opened or made for the getting of stones, gravel, or other materials for the purposes thereof, in order to prevent accidents;—or if any person or persons shall wilfully cause any damage or injury to any bridge, arch, wall, or other building or erection to be set up or erected by virtue of any Act on any part of any turnpike road, or by the side thereof;

—or if any person shall cast or throw any earth or rubbish, or other matter or thing, into any drain, ditch, culvert, tunnel, or other watercourse made by virtue of any Act, so as to obstruct the water from running or draining off any turnpike road;—or if any person shall, without being thereto authorized by the surveyor for the time being acting under any Act, shovel up, scrape, gather, or carry away any stones, gravel, sand or other materials, slutch, dirt, mire, drift, or soil from off any footpath or causeway, or any other part of such road; —or if any person shall in any manner wilfully prevent any other person from passing him or her, or any carriage under his or her care, upon any such road;—or if any such person shall dig, make, or use any pit for sawing of timber or wood within thirty feet of the centre of any such turnpike road, unless where inclosed by a fence from any such road: every person offending in any of the cases aforesaid shall forfeit and pay a sum not exceeding forty shillings for every such offence; and one moiety of such penalties shall be paid to the informer, and the other moiety thereof shall be paid to the treasurer of the trustees or commissioners of such turnpike road, and applied towards the repair of such road.

Also, if any person, having the care of any waggon, wain, cart, or other carriage, conveying goods for hire or reward, or for sale, on any turnpike road, shall not chain or fasten any dog that may be attending him or them on such road to such waggon, wain, cart, or carriage, every person so offending shall forfeit and pay any sum not exceeding twenty shillings. *Id. s.* 76.

9. *Prosecution for Penalties.*

In what cases, and how.] If the penalty exceed 20*l.* it is recoverable by action only; 3 *G.* 4, *c.* 126, *s.* 143; but if such penalty or forfeiture shall not exceed the sum of twenty pounds, and shall be more than five pounds, the same shall be recoverable only by information before a justice of the peace, subject to appeal in manner hereinafter mentioned; and if such penalty or forfeiture shall not exceed the sum of five pounds, the same shall in like manner be recoverable only by information before a justice of the peace; and no writ of *certiorari* to remove the same shall be allowed. 3 *G.* 4, *c.* 126, *s.* 143.

Limitation of prosecution.] But no person shall or may be convicted of any offence contrary to the provisions of this Act, or of the said recited Acts, [3 *G.* 4, *c.* 126. 4 *G.* 4, *c.* 95,] or of any local turnpike Act, in a summary way, before any justice or justices of the peace, after the expiration of six months

from the time when any such offence or offences shall or may have been committed. 9 *G.* 4, *c.* 77, *s.* 18.

Apprehension of offenders.] The trustees or commissioners of any turnpike road, or their clerks, or collectors, surveyors or other officers, and such other person as they shall call to their assistance, without any warrant or other authority than this Act, may seize and detain any unknown person who shall commit any offence against this or other turnpike Acts, and take him before any justice of the peace for the county, district or place, near to the place where the offence shall be committed or such offender shall be seized and apprehended. 3 *G.* 4, *c.* 126, *s.* 140.

Witnesses.] If any person, after having been paid or tendered a reasonable sum of money for his costs, charges and expenses, shall be summoned as a witness to give evidence before any justices of the peace touching any matter of fact contained in any information or complaint for any offence against any Act of Parliament relating to turnpike roads or this Act, either on the part of the prosecutor or the person accused, shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse for his refusal or neglect, or appearing shall (after having been paid or tendered a reasonable sum for his costs, charges and expenses,) refuse to be examined upon oath and give evidence before such justice of the peace: such person shall forfeit for every such offence any sum not exceeding forty shillings. *Id. s.* 138.

The trustees or commissioners of the road, mortgagees and creditors of the tolls, farmers, lessees and collectors of the tolls, and the treasurer, clerk, surveyor and other officer, are made competent witnesses, by stat. 4 *G.* 4, *c.* 95, *s.* 84.

Proceedings for penalties.] And by stat. 4 G. 4, c. 95, s. 83, in all cases in which by the said Act [3 *G.* 4, *c.* 126,] any penalty or forfeiture, by that or any other Act or Acts for making or maintaining any turnpike road imposed, is made recoverable by information before a justice of the peace, it shall and may be lawful for any justice of the peace to whom complaint shall be made of any offence against any such Act, or the said recited Act or this Act, to summon the party complained against before him, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall have been exhibited or taken by or before such justice; and all such proceedings by summons without information shall be as good,

valid and effectual, to all intents and purposes, as if an information in writing was exhibited.

Recovery and application of penalties.] All penalties, forfeitures, and fines by this Act inflicted (the manner of levying and recovering and applying whereof is not herein otherwise directed) shall, upon proof and conviction, be levied, together with the costs attending the information and conviction, by distress and sale of the goods and chattels of the party offending, by warrant under the hand and seal of such justice; and in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then such justice may order the offender to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless the offender shall give sufficient security, by recognizance or otherwise, to the satisfaction of such justice, for his appearance before such justice on such day as shall be appointed for the return of such warrant of distress, such day or days not being more than seven days from the time of taking any such security; but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then such justice of the peace shall, by warrant under his hand and seal, cause such offender to be committed to the common gaol or house of correction of the county, riding, or place where the offender shall be or reside, there to remain without bail or mainprize for any time not exceeding three calendar months, unless such penalties, forfeitures, and fines, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the monies arising by such penalties, &c. when paid or levied, if not otherwise directed to be applied by this Act, shall from time to time be paid, one moiety thereof to the informer or person suing for and recovering the same, and the other moiety to the treasurer of the trustees or commissioners for repairing and maintaining the road on which such offence shall have been committed, and applied and disposed of for the purposes of such road and of this Act. 3 *G.* 4, *c.* 126, *s.* 141.

If any toll collector, or person acting as such, shall offend against any of the provisions of this Act, whereby any penalty shall be incurred, and shall abscond or absent himself so as not to be found, then any justice of the peace before whom any such toll collector or person shall have been convicted of any such offence, in case of such collector or other person absconding after conviction, or in case of his absconding previous to conviction, then for any other justice of the peace acting for the county, on an examination of the circumstances, and ascertaining by the examination of witnesses that such offence has been committed by the person absconding, may order and

adjudge that the penalty incurred as aforesaid shall be paid by the lessee or farmer of the tolls under whom such collector or other person shall act; all which penalties shall be levied and recovered from such lessee or farmer, and applied in manner herein directed. *Id. s.* 54.

The following are the forms given by the statute:—

Information.

County of —— to wit. } *Be it remembered, that on the —— day of —— A. B. of —— in the said county informeth me ——, one of Her Majesty's justices of the peace for the said county, that —— of —— in the said county* [here describe the offence, with the time and place, and follow the words of the Act as near as may be], *contrary to the statute made in the third year of the reign of King George the Fourth, "for regulating turnpike roads," which hath imposed a forfeiture of —— for the said offence. Taken the —— day of —— before me,* *C. D.*

Conviction.

County of —— to wit. } *Be it remembered, that on the —— day of —— in the —— year of the reign of —— and in the year of our Lord, ——, A. B. is convicted before me, —— one of Her Majesty's justices of the peace for the said county, for* [here specify the offence, and when and where committed], *contrary to the form of the statute made in the —— year of** *the reign of ——, intituled* [here set forth the title of the Act]; *and I do hereby declare and adjudge that the said A. B. hath forfeited for the said offence the sum of ——* [or *shall be committed to —— for the space of ——* as the case may be.] *Given under my hand and seal, the day and year first above written.* *C. D.*

Warrant of Distress.

To the [*constable*], [*headborough*], or [*tithingman*] *of ——.*

* 3 G. 4, c. 126: "An Act to amend the general laws now in being for regulating turnpike roads in that part of Great Britain called England."

4 G. 4, c. 95: "An Act to explain and amend an Act passed in the third year of the reign of his present Majesty, to amend the general laws now in being for regulating turnpike roads in that part of Great Britain called England."

County of —— } *Whereas A. B. of* —— *in the said county*
to wit. } *is this day convicted before me, C. D. Esq., one of Her Majesty's justices of the peace in and for the said county, upon the oath of G. H., a credible witness, for that the said A. B. hath* [here set forth the offence, describing it particularly in the words of the statute, as near as may be] (*contrary to the statute in that case made and provided*), *by reason whereof the said A. B. hath forfeited the sum of* —— *to be distributed as herein is mentioned, which he hath refused to pay: these are therefore in Her Majesty's name to command you to levy the said sum of* —— *by distress of the goods and chattels of him the said A. B.; and if within the space of four days next after such distress by you taken, the said sum, together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one half of the said sum of* —— *to E. F. of* —— *who informed me of the said offence, and the other half of the said sum of* —— *to I. K., the surveyor of the turnpike road* [describing it] *where the said offence* [*neglect* or *default*] *happened, to be employed towards the repair of the said road, returning the overplus, on demand, to him the said A. B., (the reasonable charges of taking, keeping, and selling the said distress being first deducted); and if sufficient distress cannot be found of the goods and chattels of the said A. B. whereon to levy the said sum of* ——, *that then you certify the same to me, together with this warrant. Given under my hand and seal, the* —— *day of* ——.

C. D.

Return thereto.

I, A. B., constable of the [*parish, &c.*] *of* —— *in the county of* ——, *do hereby certify and make oath, that by virtue of this warrant I have made diligent search for the goods of the within named* ——, *and that I can find no sufficient goods whereon to levy the within sum of* ——.

As witness my hand, the —— *day of* ——.

A. B.

Sworn before me, the day and year, &c.

C. D.

Commitment for want of Distress.

County of —— } *To the* [*constable*] *of* —— *in the said county*
to wit. } *and to the keeper of the common gaol* [or *the house of correction*] *at* —— *in the said county.*

Whereas A. B. of —— *in the said county, was, on the* ——

day of —— convicted before me, C. D. Esq., one of Her Majesty's justices of the peace in and for the said county, upon the oath of E. F., a credible witness, for that he the said A. B. [here set forth the offence], *contrary to the statute made in the third year of the reign of his Majesty King George the Fourth, "for regulating turnpike roads," by reason whereof the said A. B. hath forfeited the sum of ——; and whereas on the —— day of —— in the year aforesaid, I did issue my warrant to the* [*constable*] *of —— to levy the said sum of —— by distress and sale of the goods and chattels of him the said A. B., and to distribute the same according to the directions of the said statute; and whereas it duly appears to me, upon the oath of the said* [*constable*], *that the said* [*constable*] *hath used his best endeavours to levy the said sum on the goods and chattels of the said A. B. as aforesaid, but that no sufficient distress can be had whereon to levy the same: these are therefore to command you the said* [*constable*] *of —— aforesaid, to apprehend the said A. B. and him safely to convey to the common gaol* [or *house of correction*] *at —— in the said county, and there deliver him to the keeper thereof, together with this precept. And I do also command you the said keeper to receive and keep in your custody the said A. B. for the space of three months, unless the said sum shall be sooner paid, pursuant to the said conviction and warrant; and for so doing this shall be your sufficient warrant. Given under my hand and seal, the —— day of —— in the year of our Lord ——.*

C. D.

Appeal.] If any person shall think himself aggrieved by any order, judgment, or determination made, or by any matter or thing done, by any justice or justices of the peace, or by any trustees or commissioners of any turnpike road, in pursuance of this Act or the said recited Act, [3 G. 4, c. 126] or any local Act for making, repairing, or maintaining any turnpike road, (except where the order, judgment, or determination of any such justice or justices, trustees or commissioners are hereby declared to be final and conclusive, and except under the particular circumstances hereinafter mentioned,) and for which no particular method of relief hath been already appointed, such person may appeal to the justices of the peace at the next general or quarter sessions of the peace to be held for the county, division, riding, or place wherein the cause of such complaint shall arise, such appellant first giving to such justice, commissioner, or trustee, by whose act or acts such person shall think himself or herself aggrieved, notice in writing of his or her intention to bring such appeal, and of the matter thereof, within six days after the cause of such complaint shall arise, and, within four days after such notice, entering into recognizances before some justice of the peace, with two sufficient sureties, conditioned to try such appeal at, and abide the

order of, and pay such costs as shall be awarded by the justices at such general or quarter sessions, and also to pay the penalty or forfeiture in case the conviction should be affirmed; and each and every justice of the peace, commissioner, or trustee having received notice of such appeal as aforesaid, shall return all proceedings whatever had before him respectively touching the matter of such appeal to the said justices at their general or quarter sessions aforesaid; and the said justices at such sessions, upon due proof of such notice having been given as aforesaid, and of such recognizance having been entered into in manner before directed, shall hear and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against as they the said justices shall think proper, to be levied and recovered by distress and sale of the goods and chattels of the person or persons against whom such determination shall be given; and the determination of such general or quarter sessions shall be final and conclusive to all intents and purposes; and no proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form, or removed by certiorari, or any other writ or process whatsoever, into any of his Majesty's courts of record at *Westminster*, any law or statute to the contrary notwithstanding: Provided always, that in case there shall not be time to give such notice and enter into such recognizances as aforesaid before the next sessions to be holden after the conviction of the appellant, then and in every such case, such appeal may be made to the next following sessions, and shall be there heard and determined: provided always, that no appeal shall be allowed against any conviction for any penalty or forfeiture which shall not exceed the sum of forty shillings. 4 *G.* 4, *c.* 95, *s.* 87.

HOMICIDE.

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Homicide generally, and its punishment.] Homicide is the killing of a human being, and is of four kinds:—1, murder, where the killing is from a preconceived malice, expressed or implied, entertained by the offender towards the deceased; 2, manslaughter, where the killing may or may not have been from malice, but if from malice, it was not preconceived; 3, excusable homicide, where the killing is *per infortunium*, or misadventure, or committed in self-defence; 4, justifiable homicide, when done of necessity, by an officer of justice, in the lawful execution of his duty, or by an ordinary person, to prevent the perpetration of a forcible and atrocious crime. The first two are felonies; the two latter, not. Murder is punishable with death; 9 *G.* 4, *c.* 31, *s.* 3; manslaughter, with transportation for life, or for not less than seven years, or imprisonment with or without hard labour in the common gaol or house of correction for not more than four years, or with such fine as the court shall award; 9 *G.* 4, *c.* 31, *s.* 9; but justifiable and excusable homicide are not punishable at all, nor are any forfeitures attached to them. *Id. s.* 10. Formerly the killing of a master by his servant, or of a husband by his wife, under such circumstances as would constitute the crime of murder in ordinary cases, was deemed an offence of a graver nature, termed petty treason; but it is now deemed murder only, and treated in every respect, and punishable as such. 9 *G.* 4, *c.* 31, *s.* 2.

The death and the cause of it.] The death may be caused either by poison, or by violence, such as shooting, cutting, stabbing, beating, drowning, strangling, suffocating, &c.; or if a parent, or person *in loco parentis*, cause the death of the child, or a master cause the death of his apprentice, by beating, ill using, or wilfully overworking it, *R.* v. *Cheeseman*, 7 *Car.* & *P.* 454, or by depriving it of sufficient nourishment, *R.* v. *Squires*, 1 *Russ.* 16, 426, or by other cruelty or ill treatment, *R.* v. *Self*, 1 *East, P. C.* 226, it will be homicide; but a married woman cannot be charged with the death of a child, by not providing it with proper food, unless it be proved that her husband furnished her with the means of providing the food. *R.* v. *Squires, supra. R.* v. *Saunders*, 7 *Car.* & *P.* 277. Where a man was indicted for the murder of an aged woman, whom he had undertaken for certain considerations to support, and who had died in his house for want of necessary food and nourishment, Patteson, J., told the jury that if they thought

the prisoner had been guilty of neglect so gross and wilful, as to satisfy them that he must have contemplated the death of the woman, in that case they should find him guilty of murder; but if they thought that he was only careless, and that athough the death was occasioned by his negligence, he did not contemplate it, they should find him guilty of manslaughter. *R.* v. *Marriott*, 8 *Car.* & *P.* 425. *See R.* v. *Plummer*, 1 *Car.* & *K.* 600. So, causing the death of a child, by giving it spirits in a quantity unfit for it, has been holden homicide. *R.* v. *Martin*, 8 *Car. P.* 211. Where a woman, being delivered of a child, left it in an orchard, covered only with a few leaves, and a kite struck it and killed it, this was holden to be homicide in the mother. 1 *Hawk. c.* 31, *s.* 6. So, where a woman was delivered of a child on the high road, and after carrying it some way, she left the child, naked and exposed, on the road side, where it died: this was holden by Coltman, J., to be homicide in the mother; but inasmuch as she left it at the side of a road much frequented, and where people were passing at the time, he held it to be manslaughter only, not murder; and he took this distinction: if a woman leave her child, a young infant, at a gentleman's door, or other place where it is likely to be found and taken care of, and the child die, it will be manslaughter only: but if the child be left in a remote place, where it is not likely to be found, as, for instance, on a barren heath, and death ensue, it will be murder. *R.* v. *Walters*, *Car.* & *M.* 164. So, where a son carried his sick father, from one town to another, in a frosty morning, against his will, by reason whereof he died, this was homicide in the son. 1 *Hale*, 431, 432. And if a man make use of a living but irresponsible agent to effect the death of another, as if a man persuade an idiot to kill another, and he do it, the man, not the idiot, is guilty of the homicide. 1 *Hawk. c.* 31, *s.* 7. Where a woman was indicted for the murder of her child, and it appeared that she gave a bottle of laudanum to the woman who had care of her child, with directions to give it a teaspoonful every night; the woman in fact did not give it to the child, but having placed the bottle on the mantel piece, another child found it there, and administered part of the contents to the prisoner's child, who soon after died: the judges held that the administering of the poison by the other child, was, in point of law, under the circumstances of the case, as much an administering of it by the prisoner, as if the prisoner had actually administered it with her own hand. *R.* v. *Catherine Michael*, 9 *Car.* & *P.* 356. So, if a man having a wild or unruly beast, which he knows would hurt persons, and he purposely let it loose, either with a design that it may injure some person, or even to frighten people and make sport, and it kill a man, the man who so let it loose will be guilty of the homicide. 1 *Hale*, 431. Nor does the law require that the

homicide should be committed against the will of the party killed; for if a man kill another with his consent, or by his desire, he is as much guilty of homicide as if he had killed him against his will. *R.* v. *Sawyer*, 1 *Russ.* 424, *and see R.* v. *Dyson*, *R.* & *Ry.* 523.

But an infant in the womb, though alive, cannot be the subject of homicide. Even where a child was partly brought forth at the time the injury was inflicted which caused its death, it was holden not to be homicide; *R.* v. *Poulton*, 5 *Car.* & *P.* 329. *R.* v. *Brain*, 6 *Id.* 349. *R.* v. *Sellis*, 7 *Id.* 850; there must be an independent circulation in the child, otherwise it cannot be considered in being for this purpose. *R.* v. *Enoch*, 5 *Car.* & *P.* 539. And where it appeared, from the evidence of the surgeon, that the child must have died, before it was fully born, so as to have an independent circulation, Gurney, B., on the authority of the above case of *R.* v. *Enoch*, held that it could not be the subject of murder; *R.* v. *Wright*, 9 *Car.* & *P.* 754; but the prisoner, who was the mother of the child, was convicted of concealing its birth. *Id.* Killing a child, however, after it has wholly come forth from the body of the mother, but whilst it is still connected with her by means of the umbilical cord, may be murder. *R.* v. *Reeves*, 9 *Car.* & *P.* 25. *R.* v. *Trilloe*, *Car.* & *M.* 650. Also the party must die within a year and a day from the time the injury was inflicted, otherwise the law presumes that the injury was not the cause of the death, and the death cannot be deemed homicide. It has been holden also that a man cannot be convicted of homicide in procuring another to be executed, by charging him falsely with a crime of which he knew him to be innocent. *R.* v. *Macdaniel*, 1 *East*, *P. C.* 33.

The act which inflicted the injury must be proved to have been done by the party accused; and the injury must be proved to have caused the death, which, in cases of any doubt, is usually proved by a surgeon or other medical man. But it will be no excuse for him who has inflicted a wound, that the party wounded might have recovered if he had taken care of himself, 1 *Hawk. c.* 31, *s.* 10, or if the wound had not been improperly treated; or that he was in such a state of disease at the time, that, independently of the wound, &c., he must shortly have died, if the wound in fact hastened his death. *See R.* v. *Cheeseman*, 7 *Car.* & *P.* 454.

Formerly both the death, and cause of the death, must have happened within the realm, to render the homicide punishable here by the common law. But now, by stat. 9 G. 4, c. 31, s. 8, "where any person being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of England, shall die of such stroke or poisoning or hurt in England, or being feloniously stricken, poisoned or hurt at any place in England, shall die of such stroke, poisoning, or hurt upon the

sea, or at any place out of England: the offence, and that of the accessories before or after the fact, may be dealt with, inquired of, tried, determined, and punished in the county or place in England, where the death, stroke, poisoning or hurt shall happen." And by sect. 7, if any British subject "shall be charged in England with any murder or manslaughter, or with being accessory before the fact to any murder, or after the fact to any murder or manslaughter, the same being respectively committed on land out of the United Kingdom, whether within the king's dominions or without, it shall be lawful for any justice of the peace of the county or place where the person so charged shall be, to take cognizance of the offence so charged, and to proceed therein as if the same had been committed within the limits of his ordinary jurisdiction;" and the party shall then be tried under a commission to be issued for that purpose.

In proceeding before a magistrate, to get a party charged with homicide committed, it is necessary that the death should be expressly proved; for otherwise non constat that any offence has been committed. And in like manner at the trial, upon an indictment for murder or manslaughter, the death must be expressly proved; it cannot be inferred from circumstances. And therefore where a girl was indicted for the murder of her illegitimate child, and it was proved that she took it from the nurse on the 7th April, with the expressed intention of taking it to her father's at L., that on the 8th at six in the evening she was seen with a child, and that between eight and nine she arrived at her father's without it, and the child was never afterwards seen: it was holden that she could not be convicted of the murder. *R.* v. *Hopkins*, 8 *Car.* & *P.* 591.

By whom committed.] This is proved, either by some person who actually saw the offence committed, or by the dying declarations of the deceased, or by the confession of the offender, or by circumstantial evidence, that is, by the proof of facts from which it may fairly be implied. As to dying declarations, in what cases evidence and the effect of them, *see ante*, p. 291.

Whether committed from malice prepense or not.] Malice prepense, or a preconceived malice, is an essential ingredient in the crime of murder; and if that be proved either expressly or impliedly, and it appear that it was the motive for committing the homicide, the offence is murder: no circumstance can extenuate it to manslaughter. *See R.* v. *Mason*, 1 *East, P. C.* 239. In all other cases, homicide, which is not justifiable or excusable, is manslaughter.

An express preconceived malice is proved from the previous

threats or declarations of the offender against the deceased, or acts from which a malicious feeling may be implied. A preconceived malice may be implied, where a man does an act, which he knows must, or most probably will, be the occasion of another's death, without any apparent or assignable motive for his doing it; even where there is merely proof of the killing, and no proof whatever on either side of the circumstances under which it was committed, the law in that case implies malice prepense from the mere fact of the homicide, and the homicide thus unexplained will be deemed murder. 1 *Hawk. c.* 31, *s.* 32. Also knowingly administering poison to another and thereby killing him, is deemed so strongly indicative of malice prepense, that it is sufficient to prove that, at the time he administered it, he knew it to be poison, and that the quantity was sufficient to kill, without further proof. *See* 1 *Hale*, 455. 1 *Hawk. c.* 31, *s.* 20.

But it is not necessary that the malice should have been preconceived against the person afterwards killed: if A. from malice prepense against B., by mistake kill C., or shoot at B. and kill C., or lay poison for B. and it is taken by C., who dies of it, it is as much murder, as if he had killed B., or entertained the malice against C. 1 *Hawk. c.* 31, *s.* 7. Or if the homicide were committed under such circumstances, that if he had killed B., it would only have been manslaughter, the killing of C. by mistake for him will also only be manslaughter. *R.* v. *Snow*, 1 *Leach*, 151. So, although he entertains no malice towards any individual, yet if he wilfully do an act which he knows must or probably will cause the death of some person, whom he knows not, and a man be thereby killed, he will be guilty of murder, in the same manner, as if he had a preconceived malice against the individual killed. As if a man, being on a horse which he knows to be used to kick, ride him amongst a crowd of persons, and the horse kick a man and kill him, the rider is guilty of murder, although he had no malice against any particular person, nor any other intention than that of diverting himself by frightening the persons around him. 1 *Hawk. c.* 31, *s.* 68. And the same where a person fires a loaded pistol among an assembly of persons, or in the public streets where many persons are passing, and thereby kills a man, or the like. *See R.* v. *Bailey*, *R. & Ry.* 1.

As the duty of a justice of the peace, with respect to homicide, is (in practice at least) merely ministerial, namely, taking the ordinary proceedings for the apprehension and committal of the accused party, it will not be necessary here to enter into any minute detail of the law upon the subject; if the distinction be plainly pointed out between felonious homicide, and that which is excusable or justifiable, so as to enable the magistrate to judge correctly whether the accused should be

committed or discharged, little more than a general view of the other parts of the subject is necessary in a work of this description. Still as the doctrine of implied malice is one of great importance, and of very general application to most cases of homicide, and as justices of the peace should be somewhat conversant with it, in order to determine rightly whether they should refuse or take bail for a party accused, I shall endeavour to illustrate it further under the following heads:—

Homicide upon provocation.] No provocation will justify a man in killing another; nor will it excuse him. Killing upon provocation, therefore, must be murder or manslaughter. If a man kill another without any provocation, or upon a slight one, it is murder. 1 *Hawk. c.* 31, *s.* 32. If upon serious provocation, a man beat another with his fists, or with a stick or the like, not likely to kill, with intent merely to chastise him, and he kill him, this will be manslaughter only; *Id. s.* 34; or if they both immediately fight with swords, and the offending party be killed, it will be manslaughter only; *Id.*; but if he kill him with a deadly weapon, the other being unarmed, or before the other has an opportunity to defend himself, it will be murder. *Id. s.* 33, *R.* v. *Lynch*, 5 *Car.* & *P.* 324. Or if he revenge himself in a cruel manner, wholly disproportioned to the provocation, and death ensue, it will be murder. *Id. s.* 42. *R.* v. *Willoughby*, 1 *East, P. C.* 288. *See R.* v. *Sherwood*, 1 *Car.* & *K.* 556. But a husband suddenly killing a man whom he finds in adultery with his wife, has been holden to be manslaughter only. 1 *Hawk. c.* 31, *s.* 36. In all these cases, however, if a sufficient time pass after the provocation, and before the wound or other cause of death, for passion to subside and reason to resume its seat, there the offence will be murder. *Id. s.* 40. *R.* v. *Hayward*, 6 *Car.* & *P.* 157.

Homicide upon an arrest.] If a sheriff's officer be killed, whilst attempting to execute civil process, it is murder, 1 *Hawk. c.* 31, *s.* 61. *R.* v. *Baker*, 1 *East, P. C.* 323, even although the writ or warrant be erroneous; 1 *Hawk. c.* 31, *s.* 62; but if he attempt to arrest a wrong person, *Id. s.* 64, or the right person in an unlawful manner, as by breaking open an outer door, or at an unlawful time, as on a Sunday, *Id. s.* 65, killing him will be manslaughter only. If a constable or any person acting in his aid be killed in endeavouring to execute a magistrate's warrant, if the warrant be legal, and the slayer had notice, either expressly, or from circumstances, of the deceased being a constable, and of the intent of the arrest, *R.* v. *Gordon*, 1 *East, P. C.* 350, 352. *R.* v. *Payne*, *Ry.* & *M.* 378, the law in that case implies malice, and the slayer will be guilty of murder. 1 *Hale*, 457. And the same, as to killing

any other person to whom a warrant is directed. But if the warrant be bad on the face of it, as being too general, *R.* v. *Hood, Ry. & M.* 281, or the like, the killing in such a case will be manslaughter only. So if a constable or other person, without warrant, apprehend, or attempt to apprehend an offender, in a case where by law he may do so, and be killed in so doing, it will be murder; *R.* v. *Ford, R. & R.* 329. *R.* v. *Woolmer & Palmer, Ry. & M.* 334. *R.* v. *Hems,* 7 *Car. & P.* 312; but if it happen in a case where he has no authority by law to apprehend the party, the killing will be manslaughter only. *R.* v. *Wm. Thompson, Ry. & M.* 80. *R.* v *Curvan, Ry. & M.* 132. *R.* v. *Curran,* 3 *Car. & P.* 397. *R.* v. *Davis,* 7 *Id.* 785. *R.* v. *Phelps et al., Car. & M.* 180. So, if a gamekeeper or his assistant be killed in attempting to apprehend a poacher, if the arrest would have been lawful, the offence is murder; *R.* v. *Warner, Albone, Butler, and Chasham, Ry. & M.* 380. *R.* v. *Edwards et al.,* 3 *Car. & P.* 390. *R.* v. *Whithorne et al., Id.* 394. *R.* v. *Ball, Ry. & M.* 330. *R.* v. *James Ball, Id.* 333; but if the arrest would have been unlawful, the offence would be manslaughter only. *R.* v. *Addis,* 6 *Car. & P.* 388.

On the other hand, if an officer, or other person, in endeavouring to make a legal arrest, be resisted, and in opposing force to force happen to kill the party, the homicide is justifiable; 1 *Hale,* 494, 481. *Fost.* 318, 274; and the officer, &c. in such a case need not retreat, as in the ordinary cases of *se defendendo*; 2 *Hale,* 218; but if the arrest would have been illegal, the killing would amount to manslaughter. *See Fost.* 318. So, where a party may lawfully be arrested for felony, and he knowing the cause, flies, so that he cannot be taken otherwise than by killing him, the constable pursuing him will be justified in killing him; or a private person will in like manner be justified, if he can prove that the deceased was actually guilty of the felony; 2 *Hale,* 118, 119; but where the arrest is for a misdemeanor only, or in a civil action, even a constable will not be justified in killing in pursuit; if in such a case he kill with a deadly weapon, it will be murder, if otherwise, manslaughter. 2 *Hale,* 217. *Fost.* 271, *and see R.* v. *Longden, R. & Ry.* 228. *R.* v. *Smith,* 1 *Russ.* 459.

Homicide by fighting.] If two persons deliberately fight a duel and one of them be killed, the survivor and the seconds are guilty of murder. 1 *Hawk. c.* 31, *s.* 31. So, if in a prize-fight, or if any two men quarrel and agree to fight on the next day, or at such a distance of time that the blood may be presumed to have cooled in the intermediate time, and they fight accordingly, and one is killed: the other and the seconds, and indeed all present aiding and abetting, are in strictness guilty of murder; but inasmuch as such combats are not with deadly

weapons, and there is therefore no indication of a previous intent to kill, the offenders are usually convicted of manslaughter only, unless the death have been caused by some unfairness in the fight.

But if two persons, upon a sudden quarrel, fight, and one kill the other, it is manslaughter only, 3 *Inst.* 55, no matter which of them struck the first blow. *See R.* v. *Lewis*, 1 *Car.* & *K.* 419. So, if they adjourned to a field and there fought, or if each went to fetch a weapon, and again met within such time that the blood could not be presumed to have cooled, and fought, the killing would be manslaughter only. 1 *Hawk. c.* 31, *s.* 29. And where two men, on a sudden quarrel, fought with their fists, and one knocked the other down, and stamped with his foot upon his stomach and belly with great force, two or three times, and killed him, this was holden to be manslaughter only. *R.* v. *Pierre Ayes*, *R.* & *Ry.* 166. But if there were a predetermination to fight, and the sudden quarrel affected merely for the purpose of evading the law, the killing would be murder. 1 *Hawk. c.* 31, *ss.* 25, 24. And the same, if there were previous malice on the part of the slayer, no matter how sudden the quarrel and fight, *Id. s.* 26, unless it could be proved that the parties had been reconciled, and that the fight arose from a fresh quarrel. *Id. s.* 30. So, if the party killing have taken any unfair advantage of the other, this may be evidence of malice prepense, and the offence be murder: as if two quarrel, and one draw his sword, and before the other can get his sword ready, he stab and kill him, this would be murder. *Id. s.* 27. So, if two persons fight, and one knock the other down, put a rope round his neck and strangle him, this is murder. *R.* v. *Shaw*, 6 *Car.* & *P.* 372. So, where two persons on a sudden quarrel, fight with fists, at first upon equal terms, but in the course of the fight one of them snatch up or take out of his pocket a knife or other deadly weapon and kill his adversary, if this be done *bonâ fide* of necessity for the purpose of defending himself, the killing will be manslaughter only; *R.* v. *Kessal*, 1 *Car.* & *P.* 437, *per Park*, *J.* *R.* v. *Snow*, 1 *Leach*, 151. *R.* v. *Anderson*, 1 *Russ.* 447, *and see R.* v. *Rankin*, *et al*, *R.* & *Ry.* 43; but if it be done for the purpose of having an unfair advantage in the conflict, it will be murder. *R.* v. *Kessal*, *supra.*

If a man come up whilst two others are fighting upon a private quarrel, whether sudden or malicious, and take part with one and kill the other, this will be manslaughter only; 1 *Hawk. c.* 31, *ss.* 35, 36; unless he used some unfair advantage, such as striking with a deadly weapon, whilst the other was unarmed, or the like, *see R.* v. *Langden*, *R.* & *Ry.* 228, or unless the party killed were an officer, at the time in the lawful exercise of his duty, 1 *Hawk. c.* 31, *s.* 57, *and see s.* 60, in which cases the offence would be murder.

And all struggles in anger, whether by fighting, wrestling or otherwise, are unlawful; and if death ensue, it will be manslaughter at least. *R.* v. *Canniff*, 9 *Car.* & *P.* 359.

Homicide in self-defence.] If a man be attacked, and retreat to the wall, or as far as he can go with safety, and then kill his assailant as the only possible means of preserving his own life, the homicide is excusable. 1 *Hawk. c.* 29, *s.* 13. And the same, although he do not retreat, if he cannot do so without manifestly endangering his life. *Id. s.* 14. Also an officer, in the execution of his duty, is not bound to retreat; *Id. s.* 16; nor is any other person, when feloniously attacked upon the highway, *Id. s.* 16, or the like. And on the other hand, he who attacks another, with malice prepense, and afterwards retreats, and kills the party in his own defence, shall not be excused, but the homicide will amount to murder. 1 *Hawk. c.* 31, *s.* 26. And this rule of law as to homicide *se defendendo*, extends to the case of master and servant, husband and wife, parent and child, killing in defence of each other respectively. 1 *Russ.* 545.

In defence of property, the rule is somewhat different: if in defence of his property, a man kill another, it will be manslaughter; 1 *Hawk. c.* 31, *s.* 29; but if his own life be at the same time endangered, and he cannot otherwise save it, without killing his adversary, he will be excused in doing so; *R.* v. *Scully*, 1 *Car.* & *P.* 319; and in such a case he is not bound to retreat, as above mentioned.

Homicide by correction.] If a parent in correcting his child, a schoolmaster his scholar, a master his apprentice, &c. cause the death of the child, &c., it is murder or manslaughter or excusable homicide, according to the circumstances under which it is committed. If he have wilfully used an instrument likely to kill, or continued the punishment longer than it was probable the child could bear, the killing would probably be deemed murder; 1 *Hale*, 473. *Fost.* 262, *R.* v. *Wiggs*, 1 *Leach*, 379; if with an instrument likely to kill, but with intention not of killing, but merely of frightening the deceased, it will be manslaughter; *R.* v. *Conner*, 7 *Car.* & *P.* 438; but if the correction be moderate, both with respect to the instrument and the continuance of the punishment, it will be homicide by misadventure merely, and excusable. 1 *Hale*, 473, *and see Anon.* 1 *East. P. C.* 261.

But where a person takes upon himself to correct, where by law he has no right, and death ensues, it will be manslaughter at the least: as where a pickpocket was thrown into a pond for the purpose of ducking him, merely by way of punishment, and he was drowned, this was holden to be manslaughter. *R.* v. *Fray*, 1 *East, P. C.* 236.

Homicide by negligence or ignorance.] If a man take upon himself an office or duty, requiring skill or care, if by his ignorance, carelessness or negligence he cause the death of another, he will be guilty of manslaughter: as if a person by careless or furious driving unintentionally run over another, and kill him, it will be manslaughter; *R.* v. *Walker*, 1 *Car.* & *P.* 320. *R.* v. *Mastin*, 6 *Car.* & *P.* 396. *R.* v. *Grout*, *Id.* 629. *R.* v. *Timmins*, 7 *Id.* 499; *R.* v. *Swindall et al.*, 2 *Car.* & *K.* 230; or if the person in command of a steam boat, by negligence or carelessness unintentionally run down a boat, &c. and the person in it is thereby drowned, he is guilty of manslaughter. *R.* v. *Green*, 7 *Car.* & *P.* 156, *and see R.* v. *Allen*, *Id.* 153. Drunkenness, however, is no excuse whatever for homicide. *R.* v. *Carroll*, 7 *Car.* & *P.* 145, *and see R.* v. *Meakin*, *Id.* 297. But if the death happen without any negligence or carelessness, &c. on the part of the person unintentionally causing it, it will be homicide by misadventure only and excusable.

In like manner, if any person, whether a medical man or not, profess to deal with the life or health of another, he is bound to use competent skill and sufficient attention; and if he cause the death of the other through a gross want of either, he will be guilty of manslaughter. *R.* v. *Spiller*, 5 *Car.* & *P.* 333. *R.* v. *Van Butchell*, 3 *Id.* 629. *R.* v. *Williamson*, *Id.* 635. *R.* v. *St. John Long*, 4 *Id.* 398, 423. *R.* v. *Webb*. 1 *Moody* & *R.* 205.

Homicide without intention, in doing another act.] If homicide be intentionally committed, in the prosecution of another offence, it is murder; whether the other offence be a felony or misdemeanor. 1 *Hawk. c.* 31, *ss.* 51, 52. But if homicide be unintentionally committed, whilst the offender is committing or endeavouring to commit another offence, if such other offence be a felony, the homicide is murder, *Id. ss.* 44, 45; *see R.* v. *Pitts*, *Car.* & *M.* 284; if a misdemeanor, it is manslaughter. Where a sheriff's officer was in possession of goods under an execution, and the owner and others gave him an excessive quantity of spirits to make him drunk, and then put him into a hackney carriage, with orders that he should be driven about the streets, and after being so driven about two hours he was found to be dead: the parties being indicted for manslaughter, Parke, B. told the jury that if they were satisfied that the parties made the deceased drunk for the unlawful purpose of preventing the completion of the execution, or, he being drunk, put him into the carriage for the like purpose, they should find them guilty. *R.* v. *Packard et al.*, *Car.* & *M.* 236. If however, the offence intended be homicide, such as would be deemed manslaughter only, as if two persons upon a sudden quarrel fight, and one of them unintentionally kill a third person who is endeavouring to part them, this will be manslaughter only,

Id. s. 47, unless the person killed be a justice of the peace or constable, in which case the killing would be murder. *Id. s.* 48. On the other hand, if in doing an innocent act, with reasonable care and skill, it unfortunately cause the death of a third person,—as if a person be poisoned by ratsbane laid to destroy vermin,—this is homicide *per infortunium* only, and excusable. *Id. s.* 46. *See R.* v. *Martyn*, 3 *Car.* & *P.* 211.

Principals and accessories.] If two persons be present, each aiding and abetting the other either in the commission of a homicide, or in the commission of some other offence, in the prosecution of which a homicide is committed, both generally are equally guilty,—the one who kills, is principal in the first degree, and the other as principal in the second. *See R.* v. *Warner et al., Ry.* & *M.* 380. *R.* v. *Edmeads*, 3 *Car.* & *P.* 390. *R.* v. *Whitehorn*, *Id.* 394. *R.* v. *Murphy*, 6 *Id.* 103. *See R.* v. *Swindall et al.*, 2 *Car.* & *K.* 230. Even if a man encourage another to kill himself, and be present at the time he does so, he will be principal in the murder. *R.* v. *Dyson*, *R.* & *Ry.* 523. Where a man and woman, who cohabited together, being in extreme poverty, agreed to commit suicide, and they together took a quantity of laudanum, of which the woman died, but the man recovered; the man was holden guilty of the murder of the woman and convicted. *R.* v. *Alison*, 9 *Car.* & *P.* 418. But if men, after being engaged in concert in attempting a joint offence, separate, and one of them commit homicide, not in pursuance of the joint intent, but in attempting to effect his escape or some other collateral act, he alone is guilty, the other is not. *R.* v. *White and Richardson*, *R.* & *Ry.* 99. So where A. and B. were riding violently along a road, and seemingly racing, and A. rode past the horse of C. without doing any damage, but B. in following him rode against C. who was thereby thrown and killed: this was holden to be manslaughter in B. only, not in A. *R.* v. *Mastin*, 6 *Car.* & *P.* 396. There may be cases, however, in which the degree of guilt of principals may be different, and one be guilty of murder, the other of manslaughter only: as if A. from malice prepense attack B. and whilst they are fighting C. comes up, takes part with A., and is killed,—this will be murder in A., but manslaughter only in C., 1 *Hawk. c.* 31, *s.* 56, unless B. were a magistrate or constable in the execution of his duty, in which case it would be murder in both. *Id. s.* 57. So if A. with malice prepense meet and suddenly fight with B. and A.'s servants, being present, but not knowing of the malice, take part with their master, and B. be killed,—this will be murder in A., manslaughter only in his servants, *Id. s.* 55, unless B. were a magistrate or constable as above mentioned. *Id. s.* 57. So if A. wantonly whip a horse on which B. is riding, so that he run over C. and kill him,—this may be manslaughter in A., but homicide *per infortunium* only in B. 1 *Hawk. c.* 29, *s.* 3.

As to accessories:—There can be no accessories before the fact in manslaughter; 1 *Hawk. c.* 30 *s.* 2; but there may in murder; and there may be accessories after the fact in both, 3 *Inst.* 55. Accessories before the fact to murder, are punishable with death; 9 *G.* 4, *c.* 31, *s.* 3; and accessories after the fact, with transportation for life, or imprisonment with or without hard labour for not more than four years. *Id.* Accessories after the fact in manslaughter, are punishable with imprisonment, with or without hard labour, for not more than two years. *Id. s.* 31.

Commitments for Murder or Manslaughter.

Murder, by stabbing.] *On* ——, *at* ——, *feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D., by stabbing the said C. D. with a knife, in and upon the left side of the belly, and on other parts of the body, of him the said C. D.; thereby giving him divers mortal wounds; of which said mortal wounds the said C. D. instantly died. And you the said keeper,* &c.

Murder, by shooting.] *On* ——, *at* ——, *feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D., by shooting and discharging a certain pistol loaded with gunpowder and a leaden bullet, at and against the said C. D., thereby giving to the said C. D., in and upon the left breast of him the said C. D., one mortal wound: of which said mortal wound the said C. D. instantly died. And you the said keeper,* &c.

Murder, by throwing a stone.] *On* ——, *at* ——, *feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D., by casting and throwing a certain stone at and against the said C. D., and striking the said C. D. with the stone aforesaid, in and upon the right side of the head, thereby giving to the said C. D. one mortal wound; of which said mortal wound the said C. D. afterwards, on the —— day of —— aforesaid, died. And you the said keeper,* &c.

Murder, by beating.] *On —— at ——, feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D., by casting and throwing the said C. D. to and against the ground, and then and there, with both the hands and feet of him the said A. B., striking, beating, and kicking the said C. D. upon the head, stomach, back, and sides of him the said C. D., thereby giving to the said C. D. several mortal bruises in and upon the head, stomach, back, and sides of him the said C. D., of which said several mortal bruises the said C. D. afterwards, on the —— day of —— last past, died. And you the said keeper,* &c.

Murder, by riding over the deceased.] *On ——, at ——, feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D., by casting and throwing him upon the ground with a certain horse, upon which the said A. B. then was riding, by means whereof the said horse with his hinder feet did strike and kick the said C. D. in and upon the back part of the head, thereby giving to the said C. D. one mortal fracture and contusion; of which said mortal fracture and contusion he the said C. D. instantly died. And you the said keeper, &c.*

Murder, by strangling.] *On ——, at ——, feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D., by choking, suffocating, and strangling him; of which said choking, suffocation, and strangling he the said C. D. then and there instantly died. And you the said keeper, &c.*

Murder, by drowning.] *On ——, at ——, feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D., by casting, throwing and pushing the said C. D. into a certain pond of water, by means of which the said C. D. was drowned; of which said drowning the said C. D. then and there instantly died. And you the said keeper, &c.*

Murder, by poison.] *On ——, at ——, feloniously, wilfully, and of his malice aforethought, did kill and murder one C. D., by mixing a large quantity of a certain deadly poison, called white arsenic, with a certain quantity of beer, which the said C. D. was then about to drink, and which the said C. D. then and there did drink; by means whereof he the said C. D. then and there became sick, and of the said poison so drunk by him the said C. D., and of the sickness occasioned thereby, then and there instantly died. And you the said keeper, &c.*

Manslaughter.] Same as for murder, except that instead of the words *"feloniously, wilfully, and of his malice aforethought, did kill and murder,"* say, *"feloniously did kill and slay."*

HOPBINDS.

See—"Malicious Injuries."

HORSE.

See—"Cattle."

HORSE SLAUGHTERING.

Licence.] No person shall keep a house or place, for the purpose of slaughtering any horse, mare, gelding, colt, filly, ass, mule, bull, ox, cow, heifer, calf, sheep, hog, goat, or other cattle, which shall not be killed for butcher's meat, without first taking out a licence for that purpose, at the general quarter sessions held for the county, &c., wherein such house or place shall be situate; and the justices of the peace, at their general quarter sessions assembled, are hereby authorized and empowered to grant such licences as aforesaid, upon a certificate, under the hands and seals of the minister and churchwardens, or overseers, or of the minister and two or more substantial householders of the parish wherein the person applying for such licence shall dwell, that such person is fit and proper to be trusted with the management and carrying on such business as aforesaid; and in case the death of any person to whom such licence shall be granted, the widow or personal representative of such person may carry on the said business, until the then next ensuing general quarter sessions, 26 *G.* 3, *c.* 71, *s.* 1.

And every such licence shall be signed by the justices of the peace assembled at such general quarter sessions, or by the major part of them; and a copy of every such licence shall be entered in a book to be kept for that purpose by the clerk of the peace; and every person so licensed as aforesaid shall cause to be painted or affixed, over the door or gate of the house or place where he shall carry on the said business, in large legible characters, his name, with the words "*Licensed for slaughtering horses, pursuant to an Act passed in the twenty-sixth year of His Majesty King George the Third.*" *Id. s.* 2. And if any person, keeping a house or place for slaughtering horses, &c., shall slaughter any horse, or cattle (not being for butcher's meat,) without having affixed over the outer gate or entrance from the public highway to the said licensed premises, the inscription above-mentioned, he shall forfeit, on summary conviction, not more than 5*l.*, nor less than 10*s.* 5 & 6 *W.* 4, *c.* 59, *s.* 7. *See the form of conviction, post,* p. 725.

The licence so granted is to be in force for the space of one year only; but it may be renewed upon application, without the certificate above mentioned. 7 & 8 *Vict. c.* 87, *s.* 1.

Also, the justices at quarter sessions, upon application and complaint to them in writing by any person, (of which fourteen days' previous notice must be given in writing to the clerk of the peace and the party complained against,) and upon due proof that any person so licensed as aforesaid has been guilty of any breach or violation of the above statutes (26

G. 3, c. 71, and 5 & 6 W. 4, c. 59) or either of them, they may cancel his licence. 7 & 8 *Vict. c.* 87, *s.* 2.

Time of killing, and treatment previously.] Every person, keeping or using any house or place for slaughtering horses or other cattle, shall kill and slaughter every such horse or cattle within three days next after such horse or other cattle shall be purchased by, or brought and delivered to him, or any person in his employ, for the purposes of slaughter as aforesaid; and shall also in the mean time, and until such horse or other cattle shall have been so slaughtered, find and provide such horse or other cattle with good and sufficient daily food and nourishment: and if any such horse or other cattle, so received for the purpose of being slaughtered as aforesaid, shall be employed in any manner of work, or shall not be supplied with good and sufficient food during the time he shall survive, every person so receiving such horse or other cattle as aforesaid, shall forfeit and pay a sum not exceeding 40*s.* nor less than 5*s.* for every day on which such offence shall be committed or continued. 5 & 6 *W.* 4, *c.* 59, *s.* 8. *See the form of the conviction, post*, p. 725.

Also, if any such licensed or other person shall wantonly or cruelly beat, ill-treat, abuse, wound or torture any horse or other cattle, in any house, pound, stable or other place, in the occupation or use of such licensed person as aforesaid, every such person shall for every such offence, on conviction thereof, forfeit and pay a sum of money not exceeding five pounds. 7 & 8 *Vict. c.* 87, *s.* 3.

And any constable, either alone or accompanied by an inspector, may enter and inspect the premises so licensed, and inspect and take an account of the horses or other cattle therein. *Id. s.* 4.

And if any person shall obstruct or assault an inspector in the execution of his duty, he shall forfeit on conviction a sum not exceeding ten pounds; *Id. s.* 5; and on the other hand, if any inspector be guilty of any neglect or violation of duty, he shall forfeit, upon conviction, a sum not exceeding ten pounds. *Id. s.* 6.

For these offences under stat. 7 & 8 Vict. c. 87, the prosecution must be commenced within three calendar months. *Id. s.* 8. The charge shall be heard and determined by two justices; and such part of the penalty as the justices shall think fit shall be paid to the informer, and the residue to the sheriff of the county for the use of the Queen. *Id. s.* 7. Any person aggrieved by such conviction may appeal to the quarter sessions, if within forty-eight hours he enter into a recognizance with two sureties, to appear and try the appeal, abide the judgment of the court, and pay such costs as may be awarded *Id. s.* 9.

Hours of killing.] No such horse, &c. shall be slaughtered, or flayed, but between eight o'clock in the morning and four in the evening during October, November, December, January, February, and March; and between six in the morning and eight in the evening, during April, May, June, July, August, and September, in every year. 26 *G.* 3, *c.* 71, *s.* 3.

Previous notice to inspector.] Every occupier of every such licensed slaughtering house or place, shall, six hours previous to the slaughtering of any horse, &c., and previous to the flaying any such horse, &c. brought dead to such slaughtering house or place, give notice in writing to the inspector, to the intent that such inspector may, before such horse, &c., shall be slaughtered or flayed, take an exact account and description of the height, age (as near as may be,) colour, and particular marks of such horse, &c., brought alive for the purpose of being slaughtered, or brought dead as aforesaid. *Id. s.* 3.

In what cases inspector may stay the killing.] An inspector shall be appointed by the parishioners of every parish in which such slaughtering houses are situate; *Id. s.* 5; who is to inspect the same; *ss.* 5, 6; and in case such inspector shall, upon examination of any horse, &c., intended to be slaughtered, have reason to believe, or be of opinion, that such horse, &c., is free from disease, and in a sound and serviceable state, or that the same has been stolen, or unlawfully come by, he shall prohibit the slaughtering of such horse, &c., for any time not exceeding the space of eight days; and in the meantime shall cause an advertisement to be inserted in the Daily Advertiser, or some public newspaper circulated in the county where such slaughter-house shall be situated, twice or oftener, unless the owner of such horse, &c., shall sooner claim the same. The expense of inserting such advertisement, to be paid by the occupier of such slaughtering-house to such inspector; and in case such occupier shall refuse to pay the same, and shall be thereof convicted on the oath of any such inspector as aforesaid, before any one justice of the peace for the county or district wherein such slaughtering-house shall be situated, he shall forfeit double the amount of the charge of such advertisement, to be raised by distress and sale of the goods and chattels of such offender by warrant under the hand and seal of such justice. *Id. s.* 5.

The form of such conviction shall be as follows:—

A. B. is convicted, on the oath of C. D. inspector of houses and places for slaughtering horses for the parish of E. in the county of D., of refusing to pay the sum of ——, *being the expense of an advertisement* or *advertisements* (as the case may be) *inserted in the* Daily Advertiser, (or some other public newspaper circulated in the county, as the case may be), *pursuant*

to the directions of the statute in that case made and provided. Given under my hand and seal this —— day of ——.

F. G.

Slaughtering without licence, or out of hours, &c.] And if any person, keeping or using any such slaughtering-house as aforesaid, shall slaughter any horse, mare, or gelding, foal or filly, ass or mule, or any bull, cow, heifer, ox, calf, sheep, hog, goat, or other cattle, for any other purpose than for butcher's meat, or shall slay any horse, &c. brought dead to such slaughtering-house, without taking out such licence, or without giving such notice as aforesaid; or shall slaughter or slay the same, at any time other than within the hours hereinbefore limited; or shall not delay slaughtering the same, according to the direction of such inspector so authorized to prohibit the same as aforesaid; felony, fine and imprisonment and corporal punishment, by public or private whipping, or transportation for not more than seven years. *Id. s.* 8.

But by stat. 5 & 6 W. 4, c. 59, s. 7, the offence of slaughtering horses, or cattle (not being for butcher's meat,) without licence, &c. is either punishable upon summary conviction, with a fine not exceeding 5*l.*, nor less than 10*s.*, or punishable as in the above section is provided. *See the form of conviction, post*, p. 725.

Licensed persons to keep accounts.] Every person so licensed as aforesaid, shall, at the time any horse, &c., shall be brought for the purpose of slaughtering or flaying, make an entry in a book, to be kept for that purpose, of the name, place of abode, and profession of the owner thereof, &c.; and all and every such licensed person shall at all times attend with, and produce such book before any justice of the peace for the county, &c. where such licensed slaughtering-house shall be situate, when required by warrant or order under the hand and seal of such justice of the peace so to do, and shall likewise produce the same at every general quarter sessions of the peace which shall be held in and for the said county. 26 *G.* 3, *c.* 71, *s.* 4.

Making false entries therein.] And if any person, so licensed as aforesaid, shall make any false entry in any such book, by him kept as aforesaid, of any matter or thing, so required by him to be made in such book as aforesaid, he, being convicted thereof, upon the oath of two credible witnesses, before any one justice of the peace for the county, riding, franchise, or district wherein such slaughtering-house shall be situated, shall forfeit any sum not exceeding twenty pounds, nor less than ten pounds, to be levied by distress and sale of the goods and chattels of such offender by warrant under the hand and seal of

such justice, the overplus arising from such distress and sale, after the deduction of the charges thereof, to be restored, one moiety thereof to be paid to the informer, and the other moiety thereof to be forthwith paid or transmitted, by the said justice, to the overseers of the poor, for the use of the poor of the parish wherein such offender or offenders shall reside; and in case such offender or offenders shall not have effects to the amount of the said penalty, it shall be lawful for such justice, after sale and application as aforesaid of such effects as shall be found, to commit him to the house of correction, there to be confined to hard labour for any time not exceeding three months, nor less than one month. *Id. s.* 10.

And a conviction for such offence, in the tenor or to the effect following shall be good:—*Id. s.* 11.

Be it remembered, that on this —— day of ——, in the year ——, A. B. licensed for slaughtering horses, is convicted, upon the oaths of C. D. and E. F., two credible witnesses, before me G. H. one of Her Majesty's justices of the peace for the county of ——, of having wilfully made or *caused to be made* [as the case may be], *a false entry in the book, required by the statute in that case made and provided to be kept by the said A. B., whereby he* [*she* or *they*] *has* [or *have*] *forfeited the sum of ——. Given under my hand and seal, the day and year above written.*

Killing sound horses.] This Act, however, shall not extend to any currier, felt-maker, tanner, or dealer in hides, who shall kill any distempered or aged horse, &c., or purchase any dead horse, &c., for the *bonâ fide* purpose of selling, using, or curing the hide or hides thereof, in the course of their respective trades; nor to any farrier employed to kill aged and distempered cattle; nor to any person who shall kill any horse, &c., of their own, or cattle, or purchasing any dead horse or other cattle to feed their own hounds or dogs, or giving away the flesh thereof for the like purpose. *Id. s.* 14. But if any collar-maker, currier, felt-maker, tanner, or dealer in hides, or farrier, or other person, shall, under colour of their respective trades or occupations, knowingly or willingly kill any sound or useful horse, gelding, mare, foal, or filly, or boil or otherwise cure the flesh thereof for the purpose of selling the same, such collar-maker, and other tradesman or person, shall be deemed and taken to be an offender within the meaning of this Act, and shall, for every such offence, forfeit any sum not exceeding twenty pounds, nor less than ten pounds. *Id. s.* 15.

Putting the hide into lime.] If any person, keeping or using any such slaughtering-house, shall throw into any lime-pit, or otherwise immerse in lime, or any preparation thereof, or rub

therewith, or with any other corrosive matter, or destroy or bury, the hide or skin of any horse, &c. by him slaughtered or flayed, or shall be guilty of any offence against this Act for which no punishment or penalty is expressly provided or declared: misdemeanor, fine and imprisonment, and such corporal punishment, by public or private whipping, as the court shall direct. *Id. s. 9.*

Lending slaughtering-houses to others.] If any person shall occasionally lend any house, barn, stable, or other place, for the purpose of slaughtering any horse, &c., without taking out such license as aforesaid, and shall thereof be convicted before any justice of the peace for the county, &c., wherein such person shall reside, upon the oath of two credible witnesses, he shall forfeit any sum not exceeding twenty pounds, nor less than ten pounds; one moiety thereof to be paid to the informer, and the other moiety to the poor of the parish where the offence shall be committed; and which said last-mentioned moiety shall, upon payment thereof, be immediately transmitted by the justice so convicting to the overseers of the poor of the said parish; and in case such penalty shall not be forthwith paid, such justice shall commit the offender to the common gaol or house of correction, for any time not exceeding three calendar months, nor less than one, unless the said penalty shall be sooner paid; *Id. s.* 13; and the form of such conviction shall be as follows, or to the like effect:—*Id.*

Be it remembered, that on this —— day of ——, A. B. was convicted, upon the oaths of two credible witnesses, before me C. D. one of Her Majesty's justices of the peace for the county of ——, for occasionally lending a house [or *place* as the case may be] *for the purpose of slaughtering horses,* [or, as the case may be, *of slaughtering cattle for other purposes than for butcher's meat*] *without a licence for that purpose first obtained, according to the statute in that case made and provided. Given under my hand and seal, the day and year above written.*

In what cases, persons bringing horses, &c., may be committed.] In case any person, who shall offer to sale, or shall bring any horse, &c., to any person keeping such slaughtering-house to be slaughtered, or being dead, to be flayed or skinned, shall not be able, or shall refuse to give a satisfactory account of himself, or of the means by which the same came into his possession; or if there shall be any reason to suspect that such horse, &c., is stolen, or otherwise unlawfully obtained: the person keeping such slaughtering-house, and his servants, &c., and also the said inspector or his servants, may seize and detain such person, and every such horse, &c., so brought or offered to sale as aforesaid, and deliver such person into the cus-

tody of a constable or other peace-officer, who shall immediately convey such person before a justice of the peace for the county, &c., where the offence shall be committed; and if such justice shall, upon examination and inquiry, have cause to suspect that such horse, &c., is stolen or unlawfully obtained, such justice may commit such person into safe custody, for any time not exceeding the space of six days, in order to be further examined; and if upon either of the said examinations, such justice shall be satisfied or have reason to believe that such horse, &c., is stolen, or illegally obtained, the said justice is hereby authorized and required to commit the person, so bringing or offering the same for sale, to the common gaol or house of correction of the county, &c., wherein the offence shall be committed, there to be dealt with according to law. *Id. s.* 7.

Inspector's books to be produced at sessions.] The book of every inspector shall be produced at every general quarter sessions of the peace, to be holden in and for the county wherein any such licence shall be granted, and delivered to the justices of the peace at such general quarter sessions assembled, then and there to be examined by them as they shall think fit. *Id. s.* 12.

Witnesses.] Any justice of the peace, before whom complaint shall be made for any offence against this Act, may summon such person as he shall think proper, to appear before him at a day certain to give evidence touching any offence committed against this Act; and in case such person or persons shall wilfully refuse or neglect to attend, or give evidence touching such offence, he shall forfeit the sum of ten pounds; and in default of payment thereof, or in case of inability to pay the same, shall stand committed to the common gaol or house of correction, for any time not exceeding three calendar months nor less than one calendar month, unless the said penalty shall be sooner paid. *Id. s.* 16.

Rated parishioners shall be deemed competent witnesses. *Id. s.* 17.

HOUSEBREAKING.

See "Burglary."

HOUSE OF CORRECTION.

See "Gaol."

HUE AND CRY.

In what cases and how.] Hue and cry is the ancient mode in this country of pursuing felons, for the purpose of apprehending them; and it may still be adopted. It may be levied, either with or without a warrant of a justice of the peace; it may be levied by a constable without warrant, upon information given to him of a felony being committed, and a description of the offenders, if such description can be given; or a justice of the peace may grant a warrant for it, upon the like information.

The following may be the form of the warrant:—

Berkshire to wit: To all constables and other officers, as well in the said county of Berks as elsewhere, to whom the execution hereof doth or shall belong:—

Whereas A. B. of —— hath upon his oath informed me L. M. one of Her Majesty's justices of the peace in and for the said county, that on —— at ——, [here describe the offence, and that it was committed either by a person by name, or by "*a certain person to him unknown,*" and then going on to describe the offender if the informant can give any such description;] *and that the said* [person unknown] *immediately after he so committed the said felony as aforesaid, absconded, and hath not as yet been apprehended. These are therefore to command you forthwith to raise the power of the towns within your several precincts, and to make diligent search therein for the person above described, and to make fresh pursuit and hue and cry after him from town to town, and from county to county, as well by horsemen as by footmen; and to give due notice thereof in writing,* (*describing in such notice the person and offence aforesaid*) *unto every next constable on every side, until they shall come to the sea shore, or until the said offender shall be apprehended. And that all persons whom you or any of you shall, as well upon such search and pursuit as otherwise, apprehend or cause to be apprehended, as justly suspected of having committed the said felony, you do carry forthwith before some one of Her Majesty's justices of the peace in and for the county or place where he or they shall be apprehended, to be by such justice examined, and dealt with according to law. And herein fail ye not, upon the peril that shall ensue thereon. Given under my hand and seal at —— this —— day of —— in the year aforesaid.*

This warrant describes sufficiently the duty of the constables in the execution of it.

Not levying or pursuing it.] If a constable do not levy hue and cry, when he ought, or if others do not pursue it when required, they are punishable upon indictment with fine or imprisonment, or both. 3 *Inst.* 117; 3 *Ed.* 1, *c.* 9.

HUNDRED.

Proceedings against, in ordinary cases.
The like, where the damage is to a church or chapel, p. 731.
The like, where the damage is in a city, town, &c., p. 731.

Proceedings against the Hundred in ordinary cases.

In what cases liable for damage.] "If any church or chapel, or any chapel for the religious worship of persons dissenting from the united church of England and Ireland duly registered or recorded, or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, or any steam-engine or other engine for sinking, draining, or working any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggonway, or trunk for conveying minerals from any mine, shall be feloniously demolished, pulled down, or destroyed, wholly or in part, by any persons riotously and tumultuously assembled together: in every such case the inhabitants of a hundred, wapentake, ward, or other district in the nature of a hundred, by whatever name it shall be denominated, in which any of the said offences shall be committed, shall be liable to yield full compensation to the person or persons damnified by the offence, not only for the damage so done to any of the subjects hereinbefore enumerated, but also for any damage which may at the same time be done by any such offenders to any fixture, furniture, or goods whatever, in any such church, chapel, house, or other of the buildings or erections aforesaid." 7 & 8 *G.* 4, *c.* 31, *s.* 1. *See Birley et al.* v. *Salford,* 12 *Law J.* 118, *m.*

Information on oath.] No action or summary proceeding as hereinafter mentioned, shall be maintainable by virtue of this Act, for the damage caused by any of the said offences, unless

the person or persons damnified, or such of them as shall have knowledge of the circumstances of the offence, or the servant or servants who had the care of the property damaged, shall, within seven days after the commission of the offence, go before some justice of the peace residing near and having jurisdiction over the place where the offence shall have been committed, and shall state upon oath before such justice the names of the offenders, if known, and shall submit to the examination of such justice touching the circumstances of the offence, and become bound by recognizance before him to prosecute the offenders when apprehended. *Id. s.* 3.

Notice of claim.] And whereas it is expedient to provide a summary mode of proceeding, where the damage is of small amount: be it therefore enacted, that it shall not be lawful for any person to commence any action against the inhabitants of any hundred or other like district, where the damage alleged to have been sustained by reason of any of the offences in this Act mentioned shall not exceed the sum of thirty pounds; but the party damnified shall, within seven days after the commission of the offence, give notice in writing of his claim for compensation, according to the form in the schedule hereunto annexed, to the high constable or some one of the high constables (if there be more than one) of the hundred or other like district, in which the offence shall have been committed. *Id. s.* 8.

The following is the form of the notice:

To the high constable [or *to* —— *one of the high constables*] *of, &c.* [or *to* —— *a peace-officer of, &c.*]

I hereby give you notice, that I intend to claim compensation from the inhabitants of [here specify the hundred or other like district, or county of a city, &c., or liberty, franchise, &c., as the case may be], *on account of the damage which I have sustained by means of* [here state the offence, the time and place where it was committed, and the nature and amount of the damage]; *and I hereby require you, within seven days after your receipt of this notice, to exhibit the same to some two justices of the peace of the county* [*riding* or *division*] *of* —— *residing in or acting for the said hundred, &c.* [or if in a liberty, franchise, &c., where the justices of the county, riding or division have no jurisdiction, then to say, *to some two justices of the peace of*, naming the liberty, franchise, &c.], [or if in a county of a city, &c. then say, *to some two justices of the peace of*, naming the county of the city, &c.], *in order that they may appoint a time and place for holding a special petty session to hear and determine my claim for compensation by virtue of an Act passed in the session of Parliament held in the seventh and eighth years of the reign of King George the Fourth, intituled* "An Act for consolidating and amending the laws in England

relative to remedies against the hundred;" *and you are required to give notice of the day, hour and place appointed for holding such petty sessions, within three days after the justices shall have appointed the same. Given under my hand this —— day of —— in the year of our Lord ——.*

(*Signed*) *A. B.*

And where any of the offences in this Act mentioned, shall be committed on any property belonging to a body corporate, such body may recover compensation against the hundred or other like district, in the same manner and subject to the same conditions as any person damnified is by this Act enabled to do: provided always, that the several conditions which are herein required to be performed by or on behalf of any person damnified, may, in the case of a body corporate, be performed by any officer of such body on behalf thereof. *Id. s.* 11.

Appointment of special sessions to hear it.] Such high constable shall, within seven days after the receipt of the notice, exhibit the same to some two justices of the peace of the county, riding, or division in which such hundred or district shall be situate, residing in or acting for such hundred or district, and they shall thereupon appoint a special petty session of all the justices of the peace of the county, riding, or division, acting for such hundred or district, to be holden within not less than twenty nor more than thirty days next after the exhibition of such notice, for the purpose of hearing and determining any claim which may be then and there brought before them on account of any such damage; and such high constable shall within three days after such appointment, give notice in writing to the claimant, of the day and hour and place appointed for holding such petty session, and shall within ten days give the like notice to all the justices acting for such hundred or district. *Id. s.* 8.

And if any high constable shall refuse or neglect to exhibit such notice as aforesaid, the party damnified may sue him for the amount of the damage sustained. *Id. s.* 10.

Notice of hearing.] The claimant shall cause a notice in writing, in the form in the schedule hereunto annexed, to be placed on the church or chapel door, or other conspicuous part of the parish, township or place in which such damage shall have been sustained, on two Sundays preceding the day of holding such petty sessions. *Id. s.* 8.

The following is the form of the notice:—

I hereby give notice, that I shall apply for compensation to the justices of the peace at a special petty sessions to be holden at —— on the —— day of —— next, at the hour of —— in the forenoon, on account of the damage which I have sustained by means of [here state the offence, the time and place where it

was committed, and the nature and amount of the damage, in the same manner as in the preceding form.] *Given under my hand this —— day of —— in the year of our Lord ——.*
(*Signed*) *A. B.*

Hearing and order.] And it shall be lawful for the justices, not being less than two, at such petty session or any adjournment thereof, to hear and examine upon oath or affirmation the claimant, and any of the inhabitants of the hundred or other like district, and their several witnesses, concerning any such offence, and the damage sustained thereby; and thereupon the said justices, or the major part of them, if they shall find that the claimant has sustained any damage by means of any such offence, shall make an order for payment of the amount of such damage to him, together with his reasonable costs and charges,—and also an order for payment of the costs and charges (if any) of the high constable or inhabitants,—and shall direct such order or orders to the treasurer of the county, riding, or division in which such hundred or district shall be situate. *Id. s.* 2.

Proceedings against the Hundred, where the Damage is to a Church or Chapel.

Every action or summary claim to recover compensation for the damage caused to any church or chapel by any of the offences in this Act mentioned, shall be brought in the name of the rector, vicar, or curate of such church or chapel; or in case there be no rector, vicar, or curate, then in the names of the church or chapelwardens, if there be any such; and if not, in the name or names of any one or more of the persons in whom the property of such chapel may be vested; and the amount recovered in any such case shall be applied in the rebuilding or repairing of such church or chapel. *Id. s.* 11.

Proceedings against the Hundred, where the Damage is in a City, Town, &c.

How, and before what justices, &c.] Where any of the offences in this Act mentioned shall be committed in a county of a city or town, or in any liberty, franchise, city, town, or place, the inhabitants thereof shall be liable to yield compensation in the same manner, and under the same conditions and restrictions in all respects, as the inhabitants of the hundred; and every thing in this Act in anywise relating to a hundred, or to the inhabitants thereof, shall equally apply to every county of a city or town, and to every such liberty, franchise, city, town,

and place, and to the inhabitants thereof; and where the justices of the peace of the county, riding, or division are excluded from holding jurisdiction in any such liberty, franchise, city, town, or place, in every such case, all the powers, authorities, and duties by this Act given to or imposed on such justices, shall be exercised and performed by the justices of the peace of the liberty, franchise, city, town, or place in which the offence shall be committed; and where the offence shall be committed in a county of a city or town, all the like powers, authorities, and duties shall be exercised and performed by the justices of the peace of such county of a city or town; and in every summary claim to be preferred under this Act against the inhabitants of a county of a city or town, or of any such liberty, franchise, city, town, or place, the notice required shall be served upon some one peace-officer of such county, liberty, franchise, city, town or place; and all matters which by this Act the high constable of a hundred is authorized or required to do in either of such cases, shall be done by the peace-officer so served, who shall have the same powers, rights, and remedies as such high constable has by virtue of this Act, and shall be subject to the same liabilities; and shall, notwithstanding the expiration of his office, continue to act for all the purposes of this Act until the termination of all proceedings in and consequent upon such action or claim; but if he shall die before such termination, his successor shall act in his stead. *Id. s.* 12.

Justices' order, and how directed.] In such liberties, franchises, cities, towns, and places as contribute to the payment of the county rate, but not being part of any hundred, every order of justices for payment to the party damnified, by virtue of this Act, shall be directed to the treasurer of the county, riding, or division in which such liberty, franchise, city, town, or place shall be situate, who is hereby required to pay the same; and the justices of the peace of such county, &c., at their next general or quarter sessions of the peace, or any adjournment thereof, shall direct such sum or sums of money as shall have been so paid or ordered to be paid by the treasurer, to be raised on such liberty, franchise, city, town, or place, over and above the general rate to be paid by the same in common with the rest of the county, &c., under the Acts relating to county rates, and paid over to the treasurer. *Id. s.* 14.

And in counties of cities and towns, and in such liberties, franchises, cities, towns, and places as do not contribute to the payment of the general county rate, all sums of money payable by virtue of any order arising out of any summary claim against the inhabitants of any county of a city or town, or of any such liberty, franchise, city, town, or place, shall be paid

out of the rate, (if any) in the nature of a county rate, or out of any fund applicable to similar purposes, where there is such a rate or fund therein, by the treasurer or other officer having the collection or disbursement of such rate or fund; and where there is no such rate or fund in such county, liberty, franchise, city, town, or place, the same shall be paid out of the rate or fund for the relief of the poor of the particular parish, township, district, or precinct therein, where the offence was committed, by the overseers or other officers having the collection or disbursement of such last-mentioned rate or fund; and in every such case the warrant and orders shall be directed and delivered to such treasurer, overseers, or other officers respectively, instead of the treasurer of the county, riding, or division. *Id. s.* 15.

HUSBAND AND WIFE.

Their liability for crime.] If the husband be present at the time his wife commits a felony (except murder and robbery), the law presumes that the wife acts under the coercion of her husband, excuses her, and punishes the husband only. 1 *Hawk. c.* 1, *s.* 2. But if she commit it in his absence, even although it be proved that he incited her to it, she is as amenable to punishment as if she were a feme sole. 1 *Hale*, 45. *Staundf.* 26. So if a wife commit treason, murder, or robbery, even in the company of her husband, the law, on account of the odiousness and dangerous consequences of these crimes, will not excuse her. 1 *Hawk. c.* 1, *s.* 9, 1 *Hale*, 47. So if a wife commit an offence under felony, even in company of her husband, she is liable to punishment, as if she were not married. 1 *Hawk. c.* 1, *s.* 13; *but see R.* v. *Price*, 8 *Car.* & *P.* 19 *semb. cont.* So, she and her husband, or she alone, may be indicted for keeping a disorderly house, 1 *Hawk. c.* 1, *s.* 12, or gaming-house, *R.* v. *Dixon and Wife*, 10 *Mod.* 335, or for forcible entry, *Dalt.* 126, riot, conspiracy, &c. But a wife cannot be charged with having conspired with her husband alone; for conspiracy must be between two persons at least, and husband and wife are but one person in law. 1 *Hawk. c.* 72, *s.* 8. Nor is she deemed accessary after the fact, in receiving her husband, although she may know at the time of his having committed a felony; for she is in his power, and is obliged to receive him. 1 *Hale*, 47.

A woman, also, can never be deemed guilty of stealing the goods of her husband, 1 *Hale*, 514. 1 *Hawk. c.* 33, *s.* 19, or of her husband and others, *R.* v. *Willis*, *Ry.* & *M.* 375, unless she

steal them from some third person with intent to make such person chargeable for them; *R.* v. *Bramley*, *R.* & *Ry.* 478; for as the husband and wife are one person in law, the wife's possession is deemed the possession of the husband. Even where a wife, living separate from her husband, set fire to his house, out of malice towards him, the judges held that she ought not to be convicted. *R.* v. *Eliza Marsh*, *Ry.* & *M.* 182. But where a wife, and a man with whom she afterwards cohabited, jointly took money and goods belonging to the husband, the judges held that an indictment for larceny would lie against the man, though not against the wife. *R.* v. *Tolfree*, *Ry.* & *M.* 243. So, where the goods of the husband were delivered by the wife to the man with whom she was about to elope, and with whom she then eloped and afterwards lived in adultery: Coleridge, J., held the man to be guilty of larceny. *R.* v. *Tollett et al.*, *Car.* & *M.* 112.

Their competency as witnesses.] In all cases where one of them is incompetent from interest, the other is so also. *See* 12 *East*, 250. *R.* v. *Williams*, 9 *B.* & *C.* 549. Nor can a wife be examined as a witness for or against her husband, when charged with a criminal offence, or a husband be examined for or against his wife, *Gilb. Ev.* 133, 134. *Bac. Abr. Evidence*, A 1, except in the case of a personal injury committed by one upon the other, in which case (from necessity) the one may be a witness against the other. *R.* v. *Azyre*, 1 *Str.* 633. A wife also may exhibit articles of the peace against her husband, *R.* v. *Doherty*, 13 *East*, 171, or a husband against his wife.

ADDENDA.

The following Cases have been decided, since this work was printed.

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3.—If A., by letter, desire B., an innocent agent, to write the name of J. S. to a receipt on a post-office order, and B. believing that J. S. has given authority to do so, sign the receipt in the name of J. S.:—A. may be indicted for the forgery, as principal. *R.* v. *Clifford*, 2 *Car.* & *K.* 202.

12.—In a commitment for an offence committed at sea, it is sufficient to state that it was committed "on the high seas," without also stating that it was committed within the jurisdiction of the Admiralty. *See R.* v. *Jones and Macdonell*, 2 *Car.* & *K.* 165.

12.—As to trial for murder on the high seas, *see R.* v. *Serva et al.*, 2 *Car.* & *K.* 53.

75.—Where a statute giving an appeal, required notice of appeal to be given seven days "at least" before the sessions, and notice was given on the 31st December, at half-past nine in the morning, and the sessions commenced on the 7th January, at ten o'clock, at which time the appeal was entered: it was holden that the notice was one day too late, as it should have been served seven days, exclusive of the day of service, and of the first day of the sessions; and that the court could not take notice of the fraction of a day. *R.* v. *JJ. of Middlesex*, 14 *Law J.*, 139, *m.*

144.—Where a man was indicted for robbery with violence, and the prosecutor did not attend at the trial, so that the robbery could not be proved, but a witness who was present proved the violence: it was holden that the prisoner, though acquitted of the robbery, might be found guilty of the assault, by stat. 1 Vict. c. 85, s. 11, as that statute applies to all cases where the indictment charges a felony, including an assault, and the jury negative the felony, and find the party guilty of the assault. *R.* v. *Birch and Hardy*, 2 *Car.* & *K.* 193.

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149.—Boiling water is a "destructive matter," within stat. 1 Vict. c. 85, s. 5; and, therefore, where a woman poured boiling water over the face and into the ear of her husband, whilst he was asleep, which caused temporary blindness, and on one side permanent deafness: it was holden that she might be convicted upon that statute. *R.* v. *Crawford*, 2 *Car. & K.* 129.

176. 183.—Where, upon an application at petty sessions for an order in bastardy, it was objected that a prior order had been made upon the same complaint, but no evidence was given of it; and the justices refused to entertain the application, unless the mother would prove that the former order had been quashed for a defect in form: the court held that the justices had no right to assume that a former order had been made, and they accordingly granted a mandamus, commanding the justices to hear the complaint. *R.* v. *Bridgman et al.*, 15 *Law J.* 44, *m.*

201.—Where a bastardy order bore date on the 24th, but was not in fact signed by the justices until the 27th, it was holden that service of a notice of appeal against the order within 24 hours after the time of signing the notice was sufficient, and that the appellant was not prevented by the date of the order from giving evidence of the time it was actually signed. *R.* v. *JJ. of Flintshire*, 15 *Law J.* 50, *m.*

201.—Where an order of bastardy was made on Saturday the 14th of March, and the putative father, intending to appeal, then entered into the necessary recognizance, but did not send notice thereof to the mother until the 19th, when the woman could not be found, nor was she actually served until the 31st.: Coleridge, J. held this to be too late, as the statute requires the notice to be given forthwith. *Ex p. Lowe*, 15 *Law J.* 99, *m.*

201.—It is not necessary that notice of appeal against a bastardy order should be served personally upon the mother; if left for her at her usual place of residence, it is sufficient. *R.* v. *JJ. of Cheshire*, 15 *Law J.* 115, *m.*

252.—An order of justices out of sessions may be removed by certiorari, for the purpose of having it quashed, although an appeal lies against it, and the party has not appealed. *R.* v. *Blathwayt et al.*, 15 *Law J.* 48, *m.*

252.—And the rule that a certiorari to remove an order of justices, ought not to issue, until the time for appealing against it has expired, applies only where the certiorari is prayed for by the party in whose favour the order is made. *R.* v. *Willatts et al.*, 14 *Law J.* 157, *m.*

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288.—If on examination before a magistrate, a party in whose possession stolen property is found, give a reasonable account how he came by it, and refer to some known person as the person from whom he received it, it is the duty of the magistrate to have that person before him, that he may confirm or contradict the account given by the accused. *Per Ld. Denman, C. J., in R.* v. *Henry Smith,* 2 *Car.* & *K.* 207.

292.—Where a wife was apprehended for felony, and her husband in the presence of the constable held out an inducement to her to confess, and she accordingly made a confession: Pollock, C. B. held that this could not be received in evidence. *R.* v. *Laugher,* 2 *Car.* & *K.* 225.

295.—In a case of felony, it is not necessary that the committing magistrate should bind over all the witnesses examined before him in the case, to give evidence, it is sufficient that he bind over those whose evidence is material; but it is desirable that all the evidence given should be transmitted to the judge. *Per Ld. Denman, C.J., in R.* v. *Henry Smith,* 2 *Car.* & *K.* 207.

318.—Fees paid by a superintendent constable to the clerk to the magistrates, upon the conviction of vagrants, are expenses within stat. 18 G. 3, c. 19, s. 4, for which he ought to be allowed. *R.* v. *Overseers of Chelmsford,* 5 *Q. B.* 66.

369.—A summary conviction which states evidence to have been given, must show that it was given in the presence of the party charged; and the same rule applies to warrants of commitment which operate in themselves as convictions. *R.* v. *Tordoft,* 5 *Q. B.* 933.

376.—Where the warrant of commitment upon a conviction, under which the defendant was committed, recited a bad conviction, but in a week afterwards another warrant against him for the same offence, reciting a good conviction, was lodged with the gaoler: the court held that he was not entitled to be discharged. *R.* v. *Richards et al.,* 5 *Q. B.* 926.

423.—As to an action for the 10*l.*, which overseers of the poor are bound to pay to each of the two inhabitants complaining of a disorderly house, and requiring the keeper to be prosecuted, *see Burgess* v. *Boetefeur et al.,* 7 *Man.* & *Gr.* 481.

434.—Embezzlement: A. was appointed assistant overseer of the poor by a board of guardians, for a district of which the township of F. formed a part; and his duty was to assist the overseers of all the townships in the district;

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he received money for rates from some of the ratepayers in F., and embezzled it: it was holden by the judges that he could not be convicted; supposing the money to belong to the overseers of F., he was not their servant; and supposing him to be the servant of the guardians, it was not their money which he embezzled. *R.* v. *Townsend*, 2 *Car.* & *K.* 168.

450.—If a child be too young to be sworn as a witness, not knowing the obligation of an oath, the court will not postpone the trial, for the purpose of having the child instructed, although this may be done, under circumstances, where the child is of more mature age, but neglected education. *R.* v. *Nicholas*, 2 *Car.* & *K.* 246.

478.—Forgery. A bill was payable to several persons, not partners, and the prisoner forged the indorsement of one of them: this was holden to be a forgery of an indorsement within the meaning of the statute, although this indorsement of itself had not the effect of rendering the bill negotiable. *R.* v. *Winterbottom*, 2 *Car.* & *K.* 37.

478.—Upon an indictment for forgery of an order for the payment of money, it must appear in evidence that it purported to be drawn on a person who was bound to obey it; and where the instrument was described as a "warrant and order," and it was a warrant, but not an order, Wightman, J., directed an acquittal. *R.* v. *Williams*, 2 *Car.* & *K.* 51.

495.—A society, whose rules did not express the purpose for which it was formed, but whose funds were applied in loans to the members, and it was called the "Economical Loan Society," was holden not to be a friendly society within stat. 10 G. 4, c. 56, &c. *R.* v. *Shortridge et al.*, 1 *Dowl.* & *Lo.* 855.

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And a conviction for such offence, in the tenor or to the effect following shall be good:—*Id. s.* 11.

Be it remembered, that on this —— day of ——, in the year ——, A. B. licensed for slaughtering horses, is convicted, upon the oaths of C. D. and E. F., two credible witnesses, before me G. H. one of Her Majesty's justices of the peace for the county of ——, of having wilfully made or *caused to be made* [as the case may be], *a false entry in the book, required by the statute in that case made and provided to be kept by the said A. B., whereby he* [*she* or *they*] *has* [or *have*] *forfeited the sum of ——. Given under my hand and seal, the day and year above written.*

Killing sound horses.] This Act, however, shall not extend to any currier, felt-maker, tanner, or dealer in hides, who shall kill any distempered or aged horse, &c., or purchase any dead horse, &c., for the *bonâ fide* purpose of selling, using, or curing the hide or hides thereof, in the course of their respective trades; nor to any farrier employed to kill aged and distempered cattle; nor to any person who shall kill any horse, &c., of their own, or cattle, or purchasing any dead horse or other cattle to feed their own hounds or dogs, or giving away the flesh thereof for the like purpose. *Id. s.* 14. But if any collar-maker, currier, felt-maker, tanner, or dealer in hides, or farrier, or other person, shall, under colour of their respective trades or occupations, knowingly or willingly kill any sound or useful horse, gelding, mare, foal, or filly, or boil or otherwise cure the flesh thereof for the purpose of selling the same, such collar-maker, and other tradesman or person, shall be deemed and taken to be an offender within the meaning of this Act, and shall, for every such offence, forfeit any sum not exceeding twenty pounds, nor less than ten pounds. *Id. s.* 15.

Putting the hide into lime.] If any person, keeping or using any such slaughtering-house, shall throw into any lime-pit, or otherwise immerse in lime, or any preparation thereof, or rub

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Putting the hide into lime.] If any person, keeping or using any such slaughtering-house, shall throw into any lime-pit, or otherwise immerse in lime, or any preparation thereof, or rub

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Lending slaughtering-houses to others.] If any person shall occasionally lend any house, barn, stable, or other place, for the purpose of slaughtering any horse, &c., without taking out such license as aforesaid, and shall thereof be convicted before any justice of the peace for the county, &c., wherein such person shall reside, upon the oath of two credible witnesses, he shall forfeit any sum not exceeding twenty pounds, nor less than ten pounds; one moiety thereof to be paid to the informer, and the other moiety to the poor of the parish where the offence shall be committed; and which said last-mentioned moiety shall, upon payment thereof, be immediately transmitted by the justice so convicting to the overseers of the poor of the said parish; and in case such penalty shall not be forthwith paid, such justice shall commit the offender to the common gaol or house of correction, for any time not exceeding three calendar months, nor less than one, unless the said penalty shall be sooner paid; *Id. s.* 13; and the form of such conviction shall be as follows, or to the like effect:—*Id.*

Be it remembered, that on this —— day of ——, A. B. was convicted, upon the oaths of two credible witnesses, before me C. D. one of Her Majesty's justices of the peace for the county of ——, for occasionally lending a house [or *place* as the case may be] *for the purpose of slaughtering horses,* [or, as the case may be, *of slaughtering cattle for other purposes than for butcher's meat*] *without a licence for that purpose first obtained, according to the statute in that case made and provided. Given under my hand and seal, the day and year above written.*

In what cases, persons bringing horses, &c., may be committed.] In case any person, who shall offer to sale, or shall bring any horse, &c., to any person keeping such slaughtering-house to be slaughtered, or being dead, to be flayed or skinned, shall not be able, or shall refuse to give a satisfactory account of himself, or of the means by which the same came into his possession; or if there shall be any reason to suspect that such horse, &c., is stolen, or otherwise unlawfully obtained: the person keeping such slaughtering-house, and his servants, &c., and also the said inspector or his servants, may seize and detain such person, and every such horse, &c., so brought or offered to sale as aforesaid, and deliver such person into the cus-

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